UNITED STATES DISTRICT COURT

Northern District of Utah

UNITED STATES OF AMERICA
V.
DARRELL JAMES MAGUIRE, JR.

JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX106CR000005-003

USM Number: 13264-081

James A. Valdez
Defendant's Attorney

THE DEFENDANT:

☑ pleaded guilty to count(s) 1 of the Indictment

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

☐ was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 USC §§ 2113(b) & 2	Robbery of Property or Money and Aiding and Abetting		1

The defendant is sentenced as provided in pages 2 through 12 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

9/7/2006
Date of Imposition of Judgment

Signature of Judge

Paul Cassell — US District Judge
Name of Judge — Title of Judge

9/11/06
Date

DEFENDANT: DARRELL JAMES MAGUIRE, JR.
CASE NUMBER: DUTX106CR000005-003

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

18 months

☑ The court makes the following recommendations to the Bureau of Prisons:

Placement in a facility as close to Arizona as possible to facilitate family visitation and an intensive drug treatment program

☑ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: DARRELL JAMES MAGUIRE, JR.
CASE NUMBER: DUTX106CR000005-003

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

24 months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

☑ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)

☑ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: DARRELL JAMES MAGUIRE, JR.
CASE NUMBER: DUTX106CR000005-003

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall refrain from incurring new credit charges or opening additional lines of credit, unless he is in compliance with any established payment schedule and obtains the approval of the probation office.

2. The defendant shall provide the probation office access to all requested financial information.

3. The defendant will submit to drug/alcohol testing as directed by the probation office, and pay a one-time $115 fee to partially defray the costs of collection and testing. If testing reveals illegal drug use or excessive and/or illegal consumption of alcohol, such as alcohol-related criminal or traffic offenses, the defendant shall participate in drug and/or alcohol abuse treatment under a copayment plan as directed by the probation office and shall not possess or consume alcohol during the course of treatment, nor frequent businesses where alcohol is the chief item of order.

4. The defendant shall submit his person, residence, office, or vehicle to a search, conducted by the probation office at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.

DEFENDANT: DARRELL JAMES MAGUIRE, JR.
CASE NUMBER: DUTX106CR000005-003

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$ 100.00	$	$ 24,164.67

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☑ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage
CUNA Mutual Group Kristie Chadwick Subogation Specialist C0733610 PO Box 1221 5910 Mineral Point Road Madison, WI 53701-1221	$3,829.93	$3,829.93	
Progressive Insurance Company Claim# 067804981 10705 South Jordan Gateway, Suite 150 South Jordan, Ut 84095	$5,000.00	$5,000.00	
TOTALS	$ 24,164.67	$ 24,164.67	

☐ Restitution amount ordered pursuant to plea agreement $ _____

☑ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: DARRELL JAMES MAGUIRE, JR.
CASE NUMBER: DUTX106CR000005-003

ADDITIONAL RESTITUTION PAYEES

Name of Payee	Total Loss*	Restitution Ordered	*Priority or* Percentage
Bank of Utah PO Box 231 Ogden, UT 84401	$15,334.74	$15,334.74	

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: DARRELL JAMES MAGUIRE, JR.
CASE NUMBER: DUTX106CR000005-003

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

A ☑ Lump sum payment of $ 24,264.67 due immediately, balance due

☐ not later than _____ , or
☑ in accordance ☐ C, ☐ D, ☐ E, or ☑ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☑ Special instructions regarding the payment of criminal monetary penalties:

Special Assessment Fee of $100 due immediately. Restitution of $24,164.67 is payable at a rate of $25 a quarter while incarcerated and at a minimum rate of $200 upon release from incarceration.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☑ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

David James Peterson 002, Kacy M Peterson 001, Darrell James Maquire, Jr 003 owe joint and several to CUNA Mutual Grp and Progressive Ins Co; David James Peterson 002 and Darrel James Maguire J 003 owe joint and several to Bank of Utah, Hunt Enterprises and Diebold. See following page for total amounts.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

DEFENDANT: DARRELL JAMES MAGUIRE, JR.
CASE NUMBER: DUTX106CR000005-003

ADDITIONAL DEFENDANTS AND CO-DEFENDANTS HELD JOINT AND SEVERAL

Case Number Defendant and Co-Defendant Names (including defendant number)	Total Amount	Joint and Several Amount	Corresponding Payee, If appropriate
David James Peterson - 002	$8,829.93	$8,829.93	
Kacy M. Peterson 001	$8,829.93	$8,829.93	
Darrell James Maguire, Jr -003	$8,829.93	$8,829.93	
David James Peterson - 002	$15,334.74	$15,335.74	
Darrell James Maguire, Jr - 003	$15,334.74	$15,334.74	

Pages 9 - 12
are the
Statement of Reasons,
which will be docketed
separately as a sealed
document

IN THE UNITED STATE DISTRICT COURT FOR THE DISTRICT OF UTAH

NORTHERN DIVISION

THE PROCTER & GAMBLE COMPANY and THE PROCTER & GAMBLE DISTRIBUTING Plaintiffs, vs. RANDY L. HAUGEN, et al, Defendants.	)	**ORDER DENYING LEAVE TO FILE OVER LENGTH MEMORANDA** Civil No. 1:95-CV-0094 TS Judge Ted Stewart

The Court having reviewed Defendants' Motion for leave to file six over length memoranda, it is therefore

ORDERED that Defendant's Motion for Leave to File OverLength Memoranda (Docket No. 914) is DENIED.

DATED this 12th day of September, 2006.

BY THE COURT

Judge Ted Stewart

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

DAVID COLDESINA, D.D.S., P.C. EMPLOYEE PROFIT SHARING PLAN AND TRUST, a domestic trust, and DAVID P. COLDESINA, a trustee, Plaintiffs, vs. THE ESTATE OF GREGG P. SIMPER, TED A MADSEN, an individual, FLEXIBLE BENEFIT ADMINISTRATORS, INC., a Utah corporation, GREYSTONE MARKETING, INC., a Utah corporation, KANSAS CITY LIFE INSURANCE COMPANY, a Missouri corporation, SUNSET FINANCIAL SERVICES, INC., a Washington corporation, and JOHN DOES I–X, Defendants.	ORDER GRANTING STIPULATED MOTION TO DISMISS WITH PREJUDICE Case No. 2:00-cv-927

This case is before the court on a Stipulation and Motion for Dismissal with Prejudice. Based upon the stipulation of the plaintiffs and the defendants, Ted A. Madsen and Flexible Benefit Administrators, Inc., and for good cause appearing, the court GRANTS the stipulated motion to dismiss all of the plaintiffs' claims against Mr. Madsen and Flexible Benefit

Administrators with prejudice [#213]. Each party shall bear its own costs, including attorneys' fees.

DATED this 11th day of September, 2006.

BY THE COURT:

Paul G. Cassell
United States District Judge

Proposed by:
LAWRENCE E. STEVENS (3103)
FRANCIS M. WIKSTROM (3462)
DAVID W. TUNDERMANN (3897)
SHANE D. HILLMAN (8194)
PARSONS BEHLE & LATIMER
One Utah Center
201 South Main Street, Suite 1800
Post Office Box 45898
Salt Lake City, UT 84145-0898
Telephone: (801) 532-1234
Facsimile: (801) 536-6111
Attorneys for US Magnesium, LLC

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. MAGNESIUM CORPORATION OF AMERICA, et al., Defendant.	**STIPULATION AND ORDER GRANTING US MAGNESIUM LLC UNTIL SEPTEMBER 18, 2006 IN WHICH TO FILE COMBINED: (1) MEMORANDUM IN OPPOSITION TO UNITED STATES OF AMERICA'S MOTION FOR SUMMARY JUDGMENT; AND (2) REPLY IN SUPPORT OF PARTIAL SUMMARY JUDGMENT** Case No. 2:01CV0040 B Judge Dee Benson Magistrate Judge David O. Nuffer

Pursuant to DUCivR 7-1(b)(3), defendant US Magnesium LLC ("USM") and Plaintiff United States of America ("United States") hereby stipulate as follows:

1. On June 26, 2006, USM filed its Motion for Partial Summary Judgment ("Motion") [docket No. 268].

2. On July 22, 2006, the Court entered a Memorandum Decision [docket no. 291] extending the time for United States to file its opposition to USM's Motion up through and including August 14, 2006. On August 15, 2006, the Court entered a separate order granting United States up through August 15, 2006 in which to file its opposition papers [docket no. 297].

3. On August 15, 2006, United States filed its Motion for Partial Summary Judgment [docket no. 298]. On the same date, United States filed a combined memorandum supporting its Motion for Partial Summary Judgment and opposing USM's Motion.

4. By operation of DUCivR 56-1, USM's reply memorandum in support of its Motion is due to be filed with the Court on or before September 1, 2006.

5. By operation of DUCivR 56-1, USM's memorandum in opposition to United States' Motion for Partial Summary Judgment is due to be filed with the Court on or before September 18, 2006.

6. USM and United States stipulate and agree that, for purposes of economy and efficiency, USM may file a single memorandum with the Court both in: (1) reply to United States' memorandum in opposition to USM's Motion; and (2) opposition to United States' Motion for Partial Summary Judgment.

7. USM and United States stipulate and agree that USM should have up to and including September 18, 2006 (the date on which USM's memorandum in opposition is presently due) in which to file its combined memorandum.

8. USM and United States stipulate and agree that United States may seek a reasonable extension of time in which to file its reply memorandum in support of its Motion for Partial Summary Judgment should United States believe additional time is necessary.

ORDER

Based upon the parties' Stipulation and Order Granting US Magnesium LLC until September 18, 2006 in which to File Combined: (1) Memorandum in Opposition to United States of America's Motion for Summary Judgment; and (2) Reply in Support of Partial Summary Judgment and GOOD CAUSE appearing therefor,

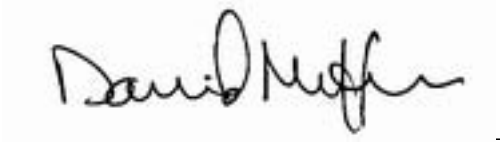
IT IS HEREBY ORDERED THAT:

1. USM shall have up to and including September 18, 2006 in which to file a combined memorandum in: (1) reply to United States' memorandum opposing USM's Motion for Partial Summary Judgment; and (2) opposition to United States of America's Motion for Partial Summary Judgment; and

2. United States may seek a reasonable extension of time to file its reply in support of its Motion for Partial Summary Judgment in the event that it deems necessary.

ENTERED this 12th day of September, 2006.

BY THE COURT:



Magistrate Judge David O. Nuffer
United States District Court Magistrate Judge

Stipulated and Approved to Form:

FOR US MAGNESIUM LLC

s/ Shane D. Hillman

FRANCIS M. WIKSTROM
LAWRENCE E. STEVENS
DAVID W. TUNDERMANN
SHANE D. HILLMAN
PARSONS BEHLE & LATIMER

FOR THE UNITED STATES

s/ Mark C. Elmer

(signed copy of document bearing signature of Mr. Elmer is being maintained in the office of Mr. Hillman, the filing attorney)
SUE ELLEN WOOLDRIDGE, Assistant Attorney General
BERNICE I. CORMAN, Trial Attorney,
United States Department of Justice,
Environment and Natural Resources Division,
Environmental Enforcement Section
MARK C. ELMER, Trial Attorney, United States Department of Justice
ANDREW LENSINK, Esq.
Office of Enforcement, Compliance and Environmental Justice
U.S. Environmental Protection Agency,
Region VIII

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of August 2006, I electronically filed the foregoing, a true and correct copy of the foregoing **STIPULATION AND ORDER GRANTING US MAGNESIUM LLC UNTIL SEPTEMBER 18, 2006 IN WHICH TO FILE COMBINED: (1) MEMORANDUM IN OPPOSITION TO UNITED STATES OF AMERICA'S MOTION FOR SUMMARY JUDGMENT; AND (2) REPLY IN SUPPORT OF PARTIAL SUMMARY JUDGMENT**, with the Clerk of court using the CM/ECF system of the filing to the following:

- **Troy L. Booher (E-Filer)**
  tbooher@swlaw.com; bjohnson@swlaw.com; mbrown@swlaw.com
- **Tom D. Branch (E-Filer)**
  tdbranch@qwest.net; branchlaw@qwest.net
- **Bernice I. Corman (E-Filer)**
  bicky.corman@usdoj.gov
- **Susan J. Eckert (E-Filer)**
  susaneckert.sellc@comcast.net
- **Mark C. Elmer (E-Filer)**
  mark.elmer@usdoj.gov; corrine.christen@usdoj.gov
- **Eric A. Overby (E-Filer)**
  Eric.Overby@usdoj.gov
- **Arthur F Sandack (E-Filer)**
  asandack@msn.com
- **Joseph M. Santarella, Jr (E-Filer)**
  jmsantarella.sellc@comcast.net; susaneckert.sellc@comcast.net
- **Alan L. Sullivan (E-Filer)**
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- **Mitzi L. Torri (E-Filer)**
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- **Michael D. Zimmerman (E-Filer)**
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- **Peter Raack (E-Filer)**
  raackk.pete@epa.gov

- **Andrew Lensink**
  lensink.andy@epa.gov
- **Leo Beus**
  lbeus@beusgilbert.com

/s/ Shane D. Hillman

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

UNITED STATES OF AMERICA	:	
	:	**ORDER**
Plaintiff,	:	
	:	**Docket No.: 2:02-CR-00051-001-ST**
	:	
Daniel Joseph Carlton	:	
Defendant	:	
	:	

It is hereby ordered that the presentence report prepared in this case be released to the Federal Public Defender's Office as it contains information regarding their client's mental health as well as his prior criminal history.

DATED this 11th day of September, 2006

BY THE COURT:

Ted Stewart
United States District Judge

BRETT L. TOLMAN, United States Attorney (#8821)
JEANNETTE F. SWENT, Assistant United States Attorney (#6043)
Attorneys for the United States of America
185 South State Street, Suite 400
Salt Lake City, Utah 84111-1506
Telephone (801) 524-5682

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	ORDER
	)	
vs.	)	
	)	
CHRISTOPHER G. KENNEDY,	)	Case No. 2:03CV891
	)	
Defendant,	)	Honorable Tena Campbell

The Court, having received the Stipulation of the parties dated 8/23/06, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Judgment was entered on January 26, 2004 in the total sum of $6,921.09 in favor of the United States of America (hereafter the "United States") and against Christopher G. Kennedy (hereafter "Kennedy").

2. Kennedy has agreed to pay and the United States has agreed to accept monthly installment payments from him in the amount of $100.00 commencing on September 15, 2006 and continuing thereafter on the 15th day of each month for a period of 12 months. At the end of said time period, and yearly thereafter, Kennedy shall submit a current financial statement to the United States Attorney's Office. This payment schedule will be evaluated and may be modified, based on the documented financial status of Kennedy.

3. In addition to the regular monthly payment set forth in paragraph 2, above, Kennedy has agreed that the United States may submit his debt in the above-captioned case to the State of Utah and the U.S. Department of Treasury for inclusion in the State Finder program and the Treasury Offset program. Kennedy understands that under these programs, any state or federal payment that he would normally receive may be offset and applied toward the debt in the above-captioned case.

4. Kennedy shall submit all financial documentation in a timely manner and keep the United States Attorney's Office apprised of the following:

a. Any change of address; and

b. Any change in employment.

5. The United States has agreed to refrain from execution on the judgment so long as Kennedy complies strictly with the agreement set forth in paragraphs 2 and 4, above. In the event Kennedy fails to comply strictly with the terms set forth in the Stipulation dated _____, the United States may move the Court ex parte for a writ of execution and/or a writ of garnishment or any other appropriate order it deems necessary for the purpose of

obtaining satisfaction of the judgment in full.

DATED this 11 day of Sept, 2006.

BY THE COURT:

Tena Campbell, Judge
United States District Court

APPROVED AS TO FORM:

CHRISTOPHER G. KENNEDY
Defendant

MANNING CURTIS BRADSHAW
& BEDNAR LLC
Brent V. Manning (2075)
Chad R. Derum (9452)
Third Floor Newhouse Building
10 Exchange Place
Salt Lake City, Utah 84111
Telephone: (801) 363-5678
Facsimile: (801) 364-5678

Attorneys for Loram Maintenance of Way, Inc.

IN THE UNITED STATES DISTRICT COURT

CENTRAL DIVISION, DISTRICT OF UTAH

UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, Plaintiff, - vs- LORAM MAINTENANCE OF WAY, INC., a Minnesota corporation, Defendant.	**ORDER OF DISMISSAL WITH PREJUDICE** **Civil No. 2:04CV00271** **Judge Tena Campbell** **Magistrate Judge David O. Nuffer**

The Court, having considered the Stipulation for Dismissal With Prejudice filed by parties, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the above-entitled action, and all claims contained therein, is hereby dismissed with prejudice and on the merits, each party to bear its own costs and attorneys fees.

DATED this 11 day of Sept, 2006.

BY THE COURT:

Honorable Tena Campbell
United States District Court

Approved as to Form and Content

MANNING CURTIS BRADSHAW
& BEDNAR LLC

/s/ Brent V. Manning
Brent V. Manning
Chad R. Derum
Attorneys for Defendant,
Loram Maintenance of Way, Inc.

UNION PACIFIC RAILROAD COMPANY

s/ Jeffrey J. Devashrayee
Jeffrey J. Devashrayee
Attorney for Plaintiff,
Union Pacific Railroad Company

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

ELAINE CHAO, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR, Plaintiff, v. MICHAEL D. MEMMOTT, SR., L. LEGRAND PRICE, GARY TOBIAN, RALPH A. MASON, ROBERT CORRAN, LEARNFRAME, INC., and THE LEARNFRAME, INC., 401(k) Plan, Defendants, v. St. Paul Traveler's Insurance Co., Third-Party Defendant.	Case No. 2:04-CV-00871-TC **ORDER** Judge Tena Campbell

ORDER

Plaintiff having filed a Motion to Extend the Discovery Deadlines in the instant matter and it being represented that Defendants have no objection to the granting of the same and good cause existing, now therefore it is:

ORDERED that the time for completing all discovery is extended to and including October 15, 2006.

Tena Campbell
TENA CAMPBELL
United States District Court Judge

Dated: Sept 11, 2006

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

DOMINION NUTRITION, INC.,

Plaintiff,

vs.

TOM MYERS and BRAD BARNHORN,

Defendants.

GLOBAL NUTRIFOODS, LLC, a Utah limited liability company,

Plaintiff/Intervenor,

vs.

DOMINION NUTRITION, INC., a Delaware corporation; and RON ACHS,

Defendants.

Civil No. 04-CV-1089

ORDER

Chief Judge Dee Benson
Magistrate Judge David Nuffer

Having reviewed the parties' briefs and the relevant law, the Court hereby GRANTS GNF's and Tom Myers' Motion for Joinder in Brad Barnhorn's Motion for Summary Judgment.

IT IS SO ORDERED.

DATED this 11th day of ~~August~~ September, 2006.

Dee Benson

Chief Judge Dee Benson

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

EXECUTIVE RISK INDEMNITY, INC., Plaintiff, vs. CAMERON J. LEWIS, et al., Defendants.	ORDER DENYING THE TRUSTEE'S MOTION FOR AN ORDER REFERRING THIS LITIGATION TO THE BANKRUPTCY COURT Case No. 2:04-CV-01115 PGC

R. Kimball Mosier, in his capacity as the bankruptcy trustee for defendant National School Fitness Foundation (NSFF) and on behalf of NSFF, moves the court for an entry of order referring this case to the United States Bankruptcy Court [#80]. The Trustee argues that plaintiff Executive Risk Indemnity's joinder of the Trustee and NSFF in this suit has caused the litigation to become a core bankruptcy matter and that should therefore be referred to the appropriate bankruptcy court. Executive Risk counters that the Trustee and NSFF stipulated to lifting the automatic stay prohibiting any action against NSFF before this court so that all the rights of all interested parties could be resolved before this court. Additionally, Executive Risk argues that this matter is not part of the core proceeding and should not be referred to the bankruptcy court.

For the reasons discussed below, the court DENIES the Trustee's and NSFF's motion for

an entry of an order referring this action to the U.S. Bankruptcy Court [#80]. The court also GRANTS the respective motions for joinder filed by defendants Dan Clark [#122] and Marion Markle [#117]. And the court DENIES defendant Shauna Black's motion for leave to file her amended answer and counterclaim to withdraw her request for a jury demand [#124]. Finally, in light of these actions, the motion by Executive Risk for a Rule 16 Scheduling Conference [#96] is GRANTED.

BACKGROUND

For the purposes of resolving this motion, the court finds the following facts. NSFF is a not-for-profit organization founded to combat childhood obesity. Executive Risk issued NSFF a Not-For-Profit Directors, Officers and Trustees Liability Policy, which was renewed by NSFF for November 15, 2003 through November 15, 2004. This policy provided specific coverage for NSFF, typically known as "entity"coverage, and had limits of $5,000,000. Because the policy was not a "wasting policy" – namely, a policy that reduces the amount a covered person or entity can recover if defense costs are provided – the advancement of defense expenses under the terms of the policy did not reduce the policy's $5,000,000 limit.

On June 1, 2004, NSFF filed a voluntary petition for bankruptcy under Chapter 11 of the Bankruptcy Code. On July 9, 2004, the Bankruptcy Court appointed the Trustee for NSFF. In early October of 2004, the Attorney General for the State of Ohio brought an action for fraud, conspiracy, and breach of fiduciary duty against the former officers and directors of NSFF. On October 19, 2004, the United States Attorney for the District of Minnesota indicted Cameron J. Lewis and others along with NSFF for running a scheme to defraud school districts and federally-

insured financial institutions.

On December 6, 2004, Executive Risk filed its original complaint before this court, seeking a declaration that the policy it issued to NSFF was void *ab initio*, rescinded, or alternatively, that the policy afforded no coverage for certain claims noticed to Executive Risk by former directors and/or officers of NSFF. Specifically, Executive Risk asserted that material misrepresentations by NSFF in its renewal application voided the policy. Aware of the automatic stay related to NSFF's bankruptcy, Executive Risk did not name NSFF as a defendant in its original complaint. On that same day, however, Executive Risk asked the Bankruptcy Court to lift the automatic stay to permit it to name NSFF as a defendant in the litigation before this court. The trustee opposed Executive Risk's motion, and the Bankruptcy Court held a hearing on the matter. On March 25, 2005, the Bankruptcy Court denied Executive Risk's motion for relief from the automatic stay. At the hearing, Executive Risk conceded that the policy was the property of NSFF's estate and that the proceeds of the policy are also property of the estate to the extent the estate incurred defense expenses covered by the policy.[1]

The Trustee then demanded Executive Risk to cover the legal expenses from criminal proceedings pending in the District of Minnesota against NSFF and others. Executive Risk agreed to cover these expenses under the terms and conditions of an interim defense funding agreement. This agreement required that if the Bankruptcy Court, this court, or "other Court [determined] that [Executive Risk] is entitled to repayment of any of the Defense Expenses

[1] Trustee's Memo. in Supp. of Mot. to Refer to Bankr. Court, Doc. No. 81, Ex. A, 10-11 (July 18, 2006) (Bankr. Hearing Transcript).

advanced . . . to the Trustee . . . then such right or claim shall be deemed to constitute a timely filed and allowed Chapter 11 priority administrative claim pursuant to 11 U.S.C. § 503(b) against the NSFF bankruptcy estate."[2] On September 14, 2005, the Bankruptcy Court approved the agreement, and deemed any right of Executive Risk "to repayment of any Defense Expenses . . . to constitute a timely filed and allowed Chapter 11 priority administrative claim."

In late November 2005, Executive Risk then advanced approximately $90,000 to cover the Trustee's defense expenses in connection with the criminal proceedings against NSFF. On December 21, 2005, the Trustee and Executive Risk entered into an agreement stipulating to the termination of the automatic stay.[3] On February 27, 2006, after a hearing with all relevant parties, the Bankruptcy Court entered an order granting Executive Risk's motion for relief from the automatic stay. The order granted Executive Risk relief from the automatic stay to pursue litigation against NSFF's estate beginning on June 1, 2006. Neither the Trustee, nor any other relevant party to this motion before this court, lodged any objections to that order by the Bankruptcy Court.

On July 11, 2006, Executive Risk filed an amended complaint naming the Trustee and NSFF as defendants in its action before this court. On July 18, 2006, NSFF and the Trustee filed a motion for entry of an order referring this case back to the Bankruptcy Court. The Trustee argues that this case is a core proceeding or, alternatively, a non-core proceeding that sufficiently

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[2] Trustee's Memo. in Supp. of Mot. to Refer to Bankr. Court, Doc. No. 81, Ex. B (July 18, 2006) (Interim Defense Funding Agreement).

[3] Executive Risk's Memo. in Opp. of Mot. to Refer to Bankr. Court, Doc. No. 98, Ex. B (Aug. 4, 2006) (December Stipulation Agreement).

relates to the bankruptcy case to require a reference. Contemporaneously, the Trustee also filed a motion in Bankruptcy Court to determine that this litigation is a core proceeding or, alternatively, a non-core proceeding sufficiently related to NSFF's bankruptcy case. In its response, Executive Risk relies on a judicial estoppel argument, maintaining that both the parties' stipulation to the lifting of the stay along with the Bankruptcy Court's order granting relief from automatic stay precludes a reference. Executive Risk further argues that the litigation is not a core proceeding or related to NSFF's bankruptcy case, and that judicial efficiency will be enhanced by keeping the litigation in this court.

STANDARD OF REVIEW

The first issue this court must decide is whether it or the Bankruptcy Court is the proper decisionmaker for the pending motion. The Trustee contends in his motion that "[p]ursuant to 28 U.S.C. § 157(b)(3), the bankruptcy courts are required to determine in the first instance whether a matter is a core bankruptcy matter or a matter related to a bankruptcy case."[4] While this assertion may be true as a general proposition, the narrow issue before this court is whether to refer this case back to the Bankruptcy Court. That is an issue for *this* court, particularly in light of the fact that the Bankruptcy Court has already granted the stipulation lifting the automatic stay. Of course, the Bankruptcy Court has specialized expertise on bankruptcy issues. In light of the Bankruptcy Court's own decision to lift the stay blocking action in this court, however, it appears that this court is tasked with deciding the pending motion – that is, the motion to refer the matter back to the Bankruptcy Court.

[4] Trustee's Mot. to Refer to Bankr. Court, Doc. No. 80, at 3 (July 18, 2006).

The issues before this court close resemble a motion for summary judgment, as the Trustee seeks to remove this litigation action back to the Bankruptcy Court based on undisputed facts. Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, . . . show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law."[5] The court must view the evidence, and draw reasonable inferences from that evidence, in the light most favorable to the nonmoving party.[6] The nonmoving party may not, however, "rest on mere allegations or denials of [its] pleading, but must set forth specific facts showing there is a genuine issue for trial."[7] "The mere existence of a scintilla of evidence in support of the [non moving party's] position will be insufficient [to overcome summary judgment]; there must be evidence on which the jury could reasonably find for [the non-moving party]."[8]

DISCUSSION

The Trustee argues that this litigation should be referred to the Bankruptcy Court. According to DUCivR 83-7.1 in relevant part, "unless a rule or order of this court expressly provides otherwise, any and all cases under Title 11 and all proceedings arising in or related to a case under Title 11 . . . are referred to the bankruptcy judges." The Trustee asserts that this

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[5] Fed. R. Civ. P. Rule 56(c); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986); *Cummings v. Norton*, 393 F.3d 1186, 1189 (10th Cir. 2005).

[6] *Cummings*, 393 F.3d at 1189; *Spaulding v. United States*, 279 F.3d 901, 904 (10th Cir. 2002).

[7] *Anderson v. Liberty Lobby*, 477 U.S. 242, 256 (1986).

[8] *Id*. at 252.

litigation is a "core proceeding" and should be referred to the Bankruptcy Court. In support of this position, the Trustee contends that this proceeding necessarily involves the determination of the claims Executive Risk asserts against NSFF. Second, the Trustee argues that this litigation is a core proceeding because it involves the determination of the NSFF estate's post-petition claim to policy proceeds. Third, the Trustee argues that this litigation is a core matter because it involves the "insured versus insured" exclusion to coverage. And finally, the Trustee argues, in the alternative, that even if the matter is somehow not a core proceeding, it is sufficiently related to the bankruptcy case to require a reference because any decision will affect the proceeds available for distribution to creditors.

Executive Risk offers several responses. First, it advances an estoppel argument, contending that the December Stipulated Agreement and the Trustee's prior position before the Bankruptcy Court essentially estop the Trustee from seeking a reference of this litigation back to the Bankruptcy Court. Because the Bankruptcy Court already approved the stipulated agreement, and because the Trustee explicitly agreed to this agreement, Executive Risk maintains that the Trustee has agreed to have the matter decided by this court.

Second, Executive Risk argues that referral back to the Bankruptcy Court is neither necessary or appropriate. It asserts that at least one of the defendants, and possibly Executive Risk as well, has already sought or will demand a jury trial and thus cause for withdrawal of this litigation from the Bankruptcy Court will ultimately occur anyway. Oral argument before the court also established that under Fed. R. Civ. P. 38(d), the jury demands by several of the defendants may not be withdrawn without consent of the parties, and therefore any jury demand

must stand at the moment. It also argues that proceeding against all of the defendants in this court would promote judicial economy, efficiency and convenience for all of the parties. Indeed, state-law contract issues apparently predominate in this case, and Executive Risk argues that the Bankruptcy Court lacks the authority to enter a final judgment resolving such contract disputes.[9] Therefore, to avoid this court reviewing *de novo* the Bankruptcy Court's proposed findings of fact and conclusions of law, Executive Risk argues that this court should decide this action in the first instance.

And finally, Executive Risk argues that its complaint does not "arise under" or "arise in" Title 11. Although the Trustee argues that Executive Risk seeks repayment of defense expenses, which would affect the post-petition proceeds and assets of NSFF, Executive Risk states that it "does not seek any affirmative monetary recovery from the NSFF estate in this action."[10] Therefore, it argues that this litigation, a long pending non-core state law contract dispute, should not be recast into a dispute over a contingent administrative claim against the NSFF estate. The court will resolve these competing claims in turn.

A. Judicial Estoppel Might Be Applicable Here

It is undisputed that both Executive Risk and the Trustee submitted a stipulated agreement to the Bankruptcy Court seeking relief from the automatic stay. The December Agreement specifically states that "in the reasonable exercise of the Trustee's business

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[9] *See* 28 U.S.C. § 157(c)(1).

[10] Executive Risk's Memo. in Opp. of Mot. to Refer to Bankr. Court, Doc. No. 98, at 12 (Aug. 4, 2006).

judgment[,] the Trustee now believes that in order to resolve all issues concerning the Policy[,] it is in the best interest of the Debtor, its bankruptcy estate and its creditors to stipulate to the termination of the Automatic Stay as it may relate to the Policy and the District Court Litigation . . . ."[11] According to this Agreement, the Trustee, NSFF and its estate "agree[d] to be joined as party defendants" in the litigation before this court, and they also stipulated "to the Bankruptcy Court entering an order modifying or terminating the Automatic Stay with respect to the Policy and the District Court Litigation[,] with such modification or termination of the Automatic Stay to be effective on June 1, 2006 . . . ."[12] Additionally, the Trustee and NSFF agreed "to answer or otherwise respond to the amended complaint in the District Court litigation . . . [and Executive Risk] agree[d] not to take any deposition upon oral examination in the District Court Litigation until after July 1, 2006."[13]

On February 27, 2006, Bankruptcy Court Judge Judith Boulden held a hearing on Executive Risk's motion for relief from the automatic stay. Judge Boulden entered her findings of fact and conclusions of law upon the record, finding that "the Trustee[,] in the reasonable exercise of his business judgment[,] has agreed to such modification or termination of the automatic stay in order to permit the respective rights under the Policy to be adjudicated in the District Court Litigation."[14] Executive Risk has submitted the 46-page transcript of Judge

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[11] December Agreement, at 2-3.

[12] *Id*. at 3.

[13] *Id*.

[14] Executive Risk's Memo. in Opp. of Mot. to Refer to Bankr. Court, Doc. No. 98, Ex. D, at 4-5 (Aug. 4, 2006) (Judge Boulden Order).

Boulden's hearing on the parties' motion, demonstrating that Judge Boulden certainly discussed the motion with all of the parties before granting the relief from automatic stay.[15] All indications demonstrate that the Trustee at least had the opportunity to discuss any objections to the motion for relief from the automatic stay, and that Judge Boulden had the opportunity to review this motion thoroughly prior to granting it. It is also clear that lifting of the automatic stay gave both parties certain rights, including the right of the Trustee *not* to have depositions taken in *this* litigation until after July 1, 2006. While it is not *explicit* in the stipulated agreement, it is extremely close to explicit that the litigation matter in this court would proceed in this court.

Executive Risk's estoppel argument certainly carries weight with the court. Where "a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position, especially if it be to the prejudice of the party who has acquiesced in the position formerly taken by him."[16] To apply judicial estoppel, (1) a party's position must be "clearly inconsistent" with its earlier position, (2) the position estopped must generally be one of fact rather than of law or legal theory, (3) judicial acceptance of the inconsistent position generally creates "the perception that either the first of the second court was misled," and (4) the party seeking to assert the inconsistent position would derive an unfair advantage or impose any unfair detriment on the

[15] Executive Risk's Memo. in Opp. of Mot. to Refer to Bankr. Court, Doc. No. 98, Ex. C (Aug. 4, 2006) (Feb. 27th Hearing Transcript).

[16] *Johnson v. Lindon City Corp.*, 405 F.3d 1065, 1069 (10th Cir. 2005).

opposing party if not estopped.[17]

To be sure, the Trustee's earlier agreement to lifting of the stay does not explicitly mean that he agreed to have this court handle all pending issues. In the December Agreement, the Trustee merely agreed to stipulate to lifting the automatic stay – in order words, to allow this case to move forward. But the Trustee now argues that he never agreed to forego his right to have the Bankruptcy Court review matters that could appropriately be brought before it. And he essentially argues that the December Agreement makes no mention as to whether the litigation shall proceed in this court, or in front of the Bankruptcy Court, once the relief from automatic stay is lifted.

The December Agreement does not explicitly state "the district court litigation will proceed unhindered by any pending bankruptcy issues." But, that agreement does indicate that the Trustee and NSFF agreed to answer or otherwise respond to the amended complaint *in this district court*. In exchange for finally agreeing to lift the stay in December 2005, Executive Risk agreed to not to take any deposition *in this district court litigation* until July 1, 2006. It appears that the Trustee got a benefit from this bargain – the automatic stay continued for another six months, while Executive Risk finally got the automatic stay lifted to proceed with litigation in this court.

The Trustee avails himself of the explicit terms in the December Agreement, stating that the parties agreed that they would neither argue or contend that the other party was barred or

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[17] *See id*. (citing *New Hampshire v. Maine*, 532 U.S. 742, 750 (2001); *Lowery v. Stovall*, 92 F.3d 219, 224 (4th Cir. 1996))

estopped from asserting any claims or defenses in the litigation before this court. Referral of this litigation back to the bankruptcy court is not, however, either a claim or a defense to this instant litigation. Seeking removal to the bankruptcy court is essentially a "venue" issue rather than a jurisdictional defense or claim – this court still maintains jurisdiction over this litigation even if it were before the Bankruptcy Court. A motion to re-refer this case back to the bankruptcy court is not a "defense or claim" in *this* district court litigation, and thus Executive Risk does not appear to have violated the Agreement, as the Trustee contends.

It is unclear to the court, however, that the Trustee has truly taken an inconsistent position with respect to whether or not this litigation should be part of the bankruptcy proceeding. It is undisputed that the Trustee, in the stipulations filed with the bankruptcy court, the representations made during the hearing before Judge Boulden, and the filed order signed by Judge Boulden, stated that he "agreed" to modify the automatic stay due to his own business judgment. Certainly, his business judgment might have changed over the interim, but he clearly made those statements before the bankruptcy court before bringing the instant motion to this court. It is unclear whether this is truly an inconsistent position with respect to the previous December Agreement, or whether this is just clever lawyering. Therefore, on judicial estoppel grounds alone, the court does not believe that this case should be referred back to the bankruptcy court. This is a close question, however, and because the court will deny the Trustee's motion on other grounds, it will proceed to discuss the other arguments.

B. Executive Risk's Litigation Appears to Be at Least in Part a Core Proceeding

The Trustee next argues that the proceeds of the insurance policy are part of NSFF's

estate and therefore involve core proceedings or are related to the bankruptcy. He argues that jurisdiction of this case is automatically referred to the Bankruptcy Court by standing order, and that the Bankruptcy Court should determine the issues prior to this court getting involved.

"Core proceedings" are those directly relating to the "restructuring of the debtor-creditor relations,"[18] and these are listed in 28 U.S.C. § 157(b)(2). "Non-core proceedings" include matters that are not "core," but are otherwise related to a case under title 11.[19] And related proceedings are "those civil proceedings that, in the absence of bankruptcy, could have been brought in a district court or state court."[20] Bankruptcy courts may enter final orders on core proceedings,[21] but cannot enter final orders on related proceedings without consent of the parties. On these related proceedings, once a bankruptcy court submits proposed findings of facts and conclusions of law to the district court, the district court reviews *de novo* these submissions and then enters final judgment.[22]

Executive Risk's Amended Complaint seeks "to rescind . . . [the Policy] procured from Executive Risk through material misrepresentations during the underwriting process."[23] In the alternative, Executive Risk "seeks a determination that, even assuming the Policy was valid, no

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[18] *Marathon*, 458 U.S. at 71.

[19] 28 U.S.C. § 157(c)(1).

[20] *John E. Burns Drilling v. Central Bank of Denver*, 739 F.2d 1489, 1494 (10th Cir. 1984) (quotations omitted).

[21] 28 U.S.C. § 157(b).

[22] 28 U.S.C. § 157(c)(1).

[23] Amended Complaint, Docket No. 74, at 2 (July 11, 2006).

coverage exists for the claims that have been made."[24] There is no indication from the amended complaint that Executive Risk is seeking money *from* the Trustee or NSFF, or that it has any claim on NSFF's assets currently involved in the bankruptcy proceeding. In fact, the amended complaint specifically states that Executive Risk has "tendered to the Bankruptcy Trustee for NSFF the premium for the Policy in order to effectuate the rescission."[25] The gist of this amended complaint is that Executive Risk seeks to sever itself from any involvement with NSFF or its estate, rather than claiming any priority over assets or seeking monetary benefit from the estate. Such a claim, at first glance, does not appear to actually involve the Title 11 proceeding currently in bankruptcy court.

Nonetheless, despite Executive Risk's belated efforts to end its relationship with NSFF, it appears disputed whether the proceeds from the earlier insurance policy now appear to be part of NSFF's estate. Executive Risk has apparently conceded that at least a small part of the policy is the property of NSFF's estate[26] and that the proceeds of the policy may well be are property of the estate to the extent the estate seeks defense expenses covered by the policy.[27] Executive Risk's amended complaint attacks the alleged material misrepresentations made to it before the

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[24] *Id*.

[25] *Id*. at 17, ¶ 70.

[26] Trustee's Memo. in Supp. to Refer to Bankr. Court, Doc. No. 81, Ex. A-1 at 10 (July 18, 2006) (Mar. 25, 2005 Bankr. Hearing) (Mary Borja: "The policy itself is an asset of the estate.").

[27] *Id*. at 10-11 (Mary Borja: "The proceeds are an asset of the estate only to the extent of the debtor's interest in those policy proceeds. . . . So to the extent that the debtor is seeking those defense expenses, those proceeds would be an asset of the estate.").

bankruptcy proceedings, thereby not actually dealing with the "core" proceeding of creditor priority or actual proceeds. To be sure, the proceeds of the insurance policy are arguably part of NSFF's estate, but the parties are in dispute as to whether the policy was void *before* the bankruptcy filing.

Because the litigation in this court deals with the policy at issue, it is possible that that the Trustee might ultimately prevail on the argument that this matter is a "core" proceeding. Under 28 U.S.C. § 157(b)(3), "[t]he bankruptcy judge shall determine . . . whether a proceeding is a core proceeding under [title 11] or is a proceeding that is otherwise related to a case until title 11." Usually, this would be a decision the Bankruptcy Court would ultimately make. In this situation, the court would generally refer the matter back to the bankruptcy court so that it could have the first crack at this issue. But it is clear that the bankruptcy court has lifted the automatic stay to allow this district court litigation proceed. On that assumption alone, the court believes the bankruptcy court has implicitly decided that *even if* the litigation is a "core" proceeding, it could proceed in this court first. Given that decision, and given that on its face this matter does not appear to be a "core" proceeding to this court, the court DENIES the Trustee's motion to refer this litigation back to the bankruptcy court.

C. Judicial Efficiency and Fairness Do Not Necessitate Denying the Trustee's Motion

Finally, Executive Risk argues that judicial efficiency and fairness necessitate denying the Trustee's motion for a reference back to the Bankruptcy Court. Executive Risk's arguments have strong appeal, as at first glance it appears simpler to keep this action before this court. The court understands that, at some point, it may well have to get involved in the litigation, either by

deciding certain issues or reviewing the Bankruptcy Court's findings of fact and conclusions of law *de novo*. Since several defendants have requested a jury trial on the issue, and Executive Risk has said that does well, the court wonders whether it would be more efficient to have these questions raised by this litigation decided now before the bankruptcy court proceeds on the issue of NSFF's estate's proceeds. These requests may well ultimately dictate a jury trial before this court. It is clear that Fed. R. Civ. P. 38(d) requires consent of the parties to withdraw a demand for trial, so a jury trial is ultimately required in this case unless it is decided at the summary judgment stage. Since it is unlikely all of the parties will consent to withdrawal of the jury demands by some of the defendants, it appears the court will likely become very involved sooner or later. And the Trustee conceded in oral argument that due to the jury demands, referral of this case back to this court would likely be "automatic and instantaneous."

The court has no doubt that the bankruptcy court is highly competent on the issues surrounding bankruptcy. Nonetheless, the automatic stay has already been lifted, the bankruptcy court granted the lifting of this stay after a hearing, the parties previously stipulated to the lifting of this stay, and several parties have requested a jury demand that appears unlikely to be withdrawn, so the court believes that it should keep this case. Therefore, in the interests of judicial efficiency and fairness to the parties, the court DENIES the Trustee's motion to refer this matter back to the bankruptcy court [#80].

Additionally, given the discussion surrounding Fed. R. Civ. P. 38(d), the court DENIES without prejudice defendant Shauna Black's motion for leave to file an amended answer and counterclaim to Executive Risk's complaint [#124]. Ms. Black indicates that she desires to

amend her request for a jury trial, but she does not indicate that she has received consent of the parties to withdraw that request. By the same token, defendant Dan Clark's Notice of Withdrawal of Jury Demand [#115] is deemed MOOT because he has also not demonstrated that he has received consent of the parties to withdraw that demand.

CONCLUSION

The court DENIES the Trustee's motion for an order referring this litigation to the Bankruptcy Court [#80]. Additionally, the court GRANTS the respective motions for joinder filed by defendants Dan Clark [#122] and Marion Markle [#117]. Finally, defendant Shauna Black's motion for leave to amend her complaint is DENIED [#124] and Mr. Clark's notice of withdrawal of jury demand is deemed MOOT [#115]. In light of these actions, the motion by Executive Risk for a Rule 16 Scheduling Conference [#96] is GRANTED.

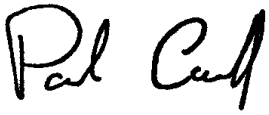
Further, the court sets a discovery cutoff date of March 1, 2007 and a dispositive motions cutoff date of April 1, 2007. The two criminal defendants awaiting trial and the two criminal defendants awaiting sentencing are not required to provide discovery until January 1, 2007. The Trustee is requested to provide an interrogatory request to Executive Risk, the four non-criminally charged defendants are requested to provide one consolidated interrogatory request to Executive Risk, and the four criminally charged defendants are requested to provide one consolidated interrogatory request to Executive Risk.

A five-day trial is set for September 10-14, 2007.

SO ORDERED.

DATED this 11th day of September, 2006.

BY THE COURT:



Paul G. Cassell
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

UNITED STATES OF AMERICA, Plaintiff, vs. PHILLIP BINDER, Defendant.	Case Number: 2:05 CR 597 Honorable Dale A. Kimball, Presiding District Court Judge

O R D E R

THIS CAUSE coming on to be heard on the defendant's STIPULATED MOTION TO RESET AND CONTINUE CAUSE, the Court having jurisdiction over the parties and subject matter and being duly advised in the premises:

IT IS HEREBY ORDERED: that said motion is:

A. (\/) **GRANTED.** B. (___) **DENIED.**

[IF STIPULATED MOTION TO CONTINUE IS GRANTED]

IT IS FURTHER ORDERED that the trial in the above-captioned matter currently scheduled for September 12, 2006 be vacated and continued to ~~the date as set on the September 12, 2006, 2:30 p.m. status hearing.~~ a date after the sum to be filed motions to suppress are decided.

~~**IT IS FURTHER ORDERED**~~ that motions, trial briefs, proposed voir dire questions, proposed jury instructions, and those other pretrial submissions as required by the Court shall be submitted to the Court by their respective dates as set at the September 12, 2006, 2:30 p.m. status hearing.

IT IS FURTHER ORDERED that the additional time requested by this stipulated request is excluded in computing the time within which the trial herein must commence pursuant to the Speedy Trial Act, 18. U.S.C. §3161(h)(8)(A), considering the factors under 18 U.S.C. §3161(h)(8)(B)(i) and (iv).

SO ORDERED, ENTERED and DATED this 11th day of September 2006.

Dale A. Kimball, Judge of the United States District Court, District of Utah.

UNITED STATES DISTRICT COURT

Central District of Utah

UNITED STATES OF AMERICA
V.
Ramese Cortez-Galaviz

JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX205CR000802-003

USM Number: 13016-081

Deirdre A. Gorman
Defendant's Attorney

THE DEFENDANT:

☑ pleaded guilty to count(s) 1s, 2s, 3s, of the Superseding Indictment

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21 USC § 841(a)(1)	Possession of 50 Grams or More of a Mixture or Substance Containing Methamphetamine With Intent to Distribute		1s

The defendant is sentenced as provided in pages 2 through 11 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

9/5/2006
Date of Imposition of Judgment

Signature of Judge

Paul Cassell — US District Judge
Name of Judge — Title of Judge

9/7/06
Date

DEFENDANT: Ramese Cortez-Galaviz
CASE NUMBER: DUTX205CR000802-003

ADDITIONAL COUNTS OF CONVICTION

Title & Section	Nature of Offense	Offense Ended	Count
21 USC § 841(a)(1)	Possession of a Substance Containing Cocaine With Intent to Distribute		2s
21 USC § 841(a)	Possession of a Substance Containing Heroin With Intent to Distribute		3s

DEFENDANT: Ramese Cortez-Galaviz
CASE NUMBER: DUTX205CR000802-003

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

120 months

☑ The court makes the following recommendations to the Bureau of Prisons:

Placement as close to Lom Poc or Los Angeles, Ca. as possible to facilitate family visitation.

☑ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____ .

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____ .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____. *with a certified copy of this judgment.*

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Ramese Cortez-Galaviz
CASE NUMBER: DUTX205CR000802-003

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

60 months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

☑ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)

☑ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) *the defendant shall support his or her dependents and meet other family responsibilities;*
5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Ramese Cortez-Galaviz
CASE NUMBER: DUTX205CR000802-003

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall not illegally reenter the United States. If the defendant returns to the United States during the period of supervision, he is instructed to contact the United States Probation Office in the District of Utah within 72 hours of arrival in the United States.

DEFENDANT: Ramese Cortez-Galaviz
CASE NUMBER: DUTX205CR000802-003

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$ 300.00	$	$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage

TOTALS	$ 0.00	$ 0.00

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Ramese Cortez-Galaviz
CASE NUMBER: DUTX205CR000802-003

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

A ☑ Lump sum payment of $ 300.00 due immediately, balance due

☐ not later than _____ , or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 11
are the
Statement of Reasons,
which will be docketed
separately as a sealed
document

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. DENNIS B. EVANSON, BRENT H. METCALF, STEPHEN F. PETERSEN, REED H. BARKER, WAYNE F. DEMEESTER, and GRAHAM R. TAYLOR, Defendants.	ORDER Case No. 2:05 CR 805

This matter is before the court on Defendant Graham Taylor's Motion to Allow Filing of Bill of Particulars and Defendant Wayne F. Demeester's Motion for Leave to File Motion for Bill of Particulars. Both of these motions seek leave of the court to allow Mr. Taylor and Mr. Demeester to file motions for bills of particulars beyond the ten-day time limitation set for such motions in rule 7(f) of the Federal Rules of Criminal Procedure.

Both motions are unopposed and Mr. Taylor and Mr. Demeester have now both filed motions requesting bills of particulars that are currently pending before United States Magistrate Judge David Nuffer. Given the complexity of this case, the fact that the motions are unopposed, and considering that the motions requesting bills of particulars are now pending, the ten-day filing time imposed by rule 7(f) will not operate to prevent the court's consideration of the motions filed by Mr. Taylor and Mr. Demeester.

Accordingly, Defendant Graham Taylor's Motion to Allow Filing of Bill of Particulars (dkt. #32) and Defendant Wayne F. Demeester's Motion for Leave to File Motion for Bill of Particulars (dkt. #40) are GRANTED.

DATED this 11th day of September, 2006.

BY THE COURT:

Tena Campbell

TENA CAMPBELL
United States District Judge

STEVEN B. KILLPACK, Federal Defender (#1808)
ROBERT K. HUNT, Assistant Federal Defender (#5722)
JAMIE ZENGER, Assistant Federal Defender (#9420)
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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. STEPHEN F. PETERSEN, Defendants.	**ORDER TO SEAL PLEADING** Case No. 2:05CR805 TC Magistrate Judge David Nuffer

Based upon the motion of the Defendant and for good cause appearing;

IT IS HEREBY ORDERED that Document #169, Defendant Petersen's Memorandum in Support of Motion to Suppress Evidence, including exhibits are sealed in the above-listed case.

Dated this 12th day of September, 2006.

BY THE COURT:

HONORABLE DAVID NUFFER
United States Magistrate Judge

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

MARGARITA JUAREZ, Plaintiff, vs. STATE OF UTAH DEPARTMENT OF HEALTH - FAMILY DENTAL PLAN, ANDREA HIGHT, and ERICA VEKTER, Defendants.	ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND MOTION TO EXCLUDE PLAINTIFF'S AFFIDAVIT Case No. 2:05CV0053PGC

In this Title VII case, the defendants, the Department of Health of the State of Utah and the Family Dental Plan (collectively, "Family Dental"), move for summary judgment on all of plaintiff Margarita Juarez's claims—retaliation, disparate impact, *quid pro quo* sexual harassment, and hostile work environment based on race and gender. Family Dental also moves to exclude or strike the affidavit Juarez submitted in conjunction with her Opposition to Defendant's Motion for Summary Judgment. The court grants Family Dental's motion to exclude Juarez's sham affidavit and grants Family Dental's motion for summary judgment in full.

BACKGROUND

When considering a motion for summary judgment, the court views the evidence in the light most favorable to the nonmoving party.[1] Viewed in this light, the record reflects the following facts.

Juarez, an Hispanic female, began working for Family Dental as a Dental Assistant II in October 2004. Family Dental is a dental facility organized by the State of Utah, with multiple clinics, at least one of which is located in Salt Lake City. Andrea Hight, a Family Dental manager, originally hired Juarez. Mark Palmer occupied the position of Juarez's direct supervisor and assigned Juarez her duties, and it was Palmer who authorized Juarez to travel on mobile dental missions. Hight initially hired Juarez as a Dental Assistant II, a position Juarez retained at all relevant times.

In December 2005, Juarez traveled to Enterprise, Utah, on a mobile dental mission for Family Dental. Dr. David Schlotman accompanied her on the trip. On January 19, 2004, Palmer authorized Juarez to travel on another mobile dental mission. Schlotman again accompanied her; this time the pair traveled to Bicknell, Utah. Juarez and Schlotman returned to Salt Lake City on January 23, 2004.

Family Dental employed Schlotman as a dentist and as Juarez's co-worker. Schlotman possessed no power to make tangible employment decisions relating to Juarez. Juarez knew the dentists at Family Dental had no supervisory authority over her, and no one ever told Juarez anything to the contrary. Despite this, Juarez claims she thought Schlotman was her supervisor

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[1] *See Cortez v. McCauley*, 438 F.3d 980, 988 (10th Cir. 2006).

in Bicknell, by virtue of the fact that she and Schlotman traveled with no management personnel present.

On January 28, 2004, Schlotman lodged a complaint with Family Dental management personnel alleging Juarez made sexual advances toward him during the trip to Bicknell. Specifically, he contended Juarez put her arms around his neck, kissed him, and said she wanted to spend "eternity" with him.[2] Hight, a member of Family Dental's management, and Palmer, Juarez's direct supervisor, confronted Juarez about Schlotman's allegations on January 29, 2004. During this confrontation, Hight requested Juarez wait to contact an attorney until after Family Dental completed an internal investigation. Juarez denied Schlotman's allegations, but did not otherwise respond to the inquiry at this time.

On January 30, 2004, Juarez reported to Palmer that Schlotman had sexually harassed her on the trip to Bicknell by offering her $100 in exchange for sex, which she had refused. Palmer informed Hight of Juarez's complaint, and Hight notified Family Dental's Human Resources Department, just as she had with Schlotman's complaint. In her report to Palmer, Juarez provided details about Schlotman's offer of money for sex, but did not provide details about the return trip to Salt Lake.

Taking the facts in the light most favorable to the plaintiff, the court finds the events in Bicknell occurred as follows. (Of course, the participants other than the plaintiff may dispute this account.) On January 22, 2004, Juarez and Schlotman accompanied each other to dinner. On the way back to the hotel, Schlotman offered Juarez $100 in exchange for sex. Specifically,

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[2]Family Dental Memo. in Support of Sum. Judg., Docket No. 59, Ex. B, at 60 (June 6, 2005) (Affidavit of Shelley Miles).

he pulled a $100 bill out of his wallet, showed it to Juarez, and told her it was hard to find change for a large bill in a rural area. "He then said he was paying that amount to women to follow him to his room to have sex with him."[3] Juarez only responded that she wanted to return to her room to rest. Schlotman answered, "Okay, that's okay."[4] Then Juarez walked back to her room.

The next day, on the return trip to Salt Lake, Schlotman seemed angry. He told Juarez that if he were her, he would return to El Salvador. He pointed out a billboard sign addressing the cost of illegal immigration to Utahans. Schlotman then called "all women" prostitutes and picked a dog up from Juarez's lap and threw it to the back of the car.[5]

On February 4, 2004, Juarez contacted Hight about Family Dental's investigation of the competing sexual harassment complaints. During the course of the conversation, Juarez quit her job with Family Dental. Hight asked her to reconsider that decision and to call her back. After Juarez changed her mind about ending her employment with Family Dental, Hight welcomed her back.

On February 18, 2004, Juarez told Hight of the results of her online research on Schlotman. Specifically, she told Hight the Division of Occupational and Professional Licensing ("DOPL") previously investigated Schlotman and he was only allowed to practice dentistry under the direct supervision of a licensed dentist. She also told Hight about Schlotman's history of

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[3]Family Dental Memo. in Support of Sum. Judg., Docket No. 59, Ex. A, at 44 (June 6, 2005) (Margarita Juarez Examination Under Oath).

[4]*Id.*

[5]Juarez Memo. in Opposition to Sum. Judg., Docket No. 66, Ex. D, at 52, 61 (July 14, 2006) (Margarita Juarez Examination Under Oath).

domestic violence. The parties dispute whether Hight responded that she already knew only of Schlotman's DOPL history or she knew of Schlotman's entire history. Taken in the light most favorable to the plaintiff, the court assumes Hight responded that she knew of Schlotman's entire history. Before speaking with Hight about the matter, Juarez had discussed Schlotman's history and the details of her complaint against Schlotman with another dentist, Dr. Sumner. Upon hearing of this, Hight and Shelley Miles cautioned Juarez about the need to keep the investigation confidential. Hight and Miles advised Juarez discussing Schlotman's history with others could be seen as retaliation for Schlotman's sexual harassment complaint against Juarez, and Juarez's job would be in jeopardy if she failed to keep the information confidential.

On February 25, 2004, Hight told Juarez she would have to work with Schlotman one-on-one again sometime. However, Juarez never actually did work with Schlotman again. From February 11 to February 13, 2004, Schlotman was scheduled to see patients at the Salt Lake clinic. To prevent Juarez from seeing Schlotman, Family Dental temporarily transferred Juarez from the Salt Lake clinic to the Ellis Ship clinic on those dates. Juarez did not view the transfer as harassment. To further accommodate Juarez's desire to avoid Schlotman as well as to facilitate her ability to seek medical treatment, Family Dental allowed Juarez to take medical leave from February 24 to February 29, 2004. On February 24, 2004, while on medical leave, Juarez filed a complaint with DOPL. On March 3, 2004, DOPL contacted employees at Family Dental about Juarez's complaint.

Subsequently, a few employees withdrew from Juarez, decreasing their interactions with her. Specifically, Sylvia Case, a co-worker, stopped talking with Juarez as much as previously. Case worked at the Ellis Ship clinic, so Juarez did not see her often but she had previously acted

friendly when Juarez saw her. After the Bicknell trip, one day Juarez worked at the Ellis Ship clinic when Case made a comment about dental assistants going to dinner with dentists and asked Juarez if she had fun on the trip to Bicknell. Palmer also withdrew from Juarez by talking with her less and speaking with other dental assistants more. However, Palmer never refused to speak with Juarez about her job or job duties. Palmer observed "[t]here was definitely a difference" in how Juarez was treated following her complaint,[6] but clarified that the difference was partly based on Juarez's own behavior. Palmer did not ever "observe anything that was ill will or purposefully trying to avoid her."[7] When Juarez complained to Palmer fellow employees were pulling away and treating her coldly, he responded by saying, "that's okay, that's the way how things are going to be after DOPL has set foot in here."[8]

Juarez also had problems with a few other Family Dental employees. Joe Guimond, a technician, monitored Juarez's work, followed her around the office and out to her car, pushed her against the wall, and implied she should quit her job. Also, at an unspecified time, Dr. Erika Vekter told Juarez her claim would not be believed because of her race. On another occasion, Hight questioned Juarez about her accent and her background. Both Hight and Vekter told Juarez she needed to improve her English skills. And, based on licensing concerns, the dentists

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[6]Family Dental Memo. in Support of Sum. Judg., Docket No. 59, Ex. D, at 57 (June 6, 2005) (Mark Palmer Examination Under Oath).

[7]*Id.* at 58.

[8]Family Dental Memo. in Support of Sum. Judg., Docket No. 59, Ex. A, at 142 (June 6, 2005) (Margarita Juarez Examination Under Oath).

at Family Dental collectively wrote letters of concern to Family Dental management and to DOPL.

In the meantime, on March 11, 2004, Family Dental placed both Juarez and Schlotman on paid administrative leave, pending completion of its internal investigation. Schlotman never returned to work at Family Dental. He submitted his resignation letter, dated March 22, 2004, and Family Dental terminated his employment effective March 23, 2004. On March 26, 2004, Family Dental informed Juarez she could return from administrative leave. She returned to work on March 29, 2004.

On May 18, 2004, Family Dental concluded its internal investigation and notified Juarez of this fact via letter. Due to lack of evidentiary support, Family Dental did not substantiate either Schlotman's or Juarez's claim of sexual harassment. On July 14, 2004, Juarez filed a Charge of Discrimination with the Utah Anti-Discrimination Division and the United States Equal Opportunity Employment Commission, alleging Family Dental discriminated against her on the basis of her race, origin, color, and sex, in violation of Title VII. She also alleged Family Dental had retaliated against her for lodging a sexual harassment complaint against Schlotman and a DOPL complaint against Schlotman and Family Dental. In this document, Juarez referred to Schlotman as her co-worker.

Upon her return from administrative leave on March 29, 2004, Juarez believed she had been deprived of some of her supervisory duties and that she had a new job performance plan. She asked Palmer if she retained her supervisory duties, and he responded that her job duties had not changed at all and that she still occupied the position of Dental Assistant II. Juarez's job included a class of duties referred to as "runner," as in running the clinic (not, as is sometimes

the case in other professions, running around on errands). Upon her return from leave, Juarez worked in this running capacity, but also worked as a chairside assistant more than one time a week. Juarez often assigned herself as the runner because it allowed her to oversee work operations better and she felt more productive in that position. Employees qualified as Dental Assistant I's generally perform chairside assisting duties and occasionally expanded duties, but they cannot act as runners. Running is an essential function of Dental Assistant II's because Dental Assistant II's possess extra skills and abilities. For this same reason, Dental Assistant II's earn a higher rate of pay.

Family Dental cross-trains all their dental assistants as front-desk receptionists so they can fill in when needed. At one point after her return from administrative leave, Palmer offered Juarez a position as a front-desk receptionist, but Juarez refused and never took the position. During this same general time period, Juarez's job title stopped appearing on her pay stubs. Palmer explained to Juarez a computer problem led to the omission. Many state employees' pay stubs lacked job titles during the same time period.

Family Dental official policies prohibit employees from leaving for lunch wearing scrubs, parking in front of the building, using the front door of the clinic, and using their cellular phones in the office. Although Family Dental enforced none of these policies regularly before Juarez left for administrative leave, upon her return, Family Dental reminded Juarez of the policies. A few days later, Family Dental management reminded all other employees of the same policies.

Beginning in February 2004, Juarez sought psychiatric help.

Throughout the course of Juarez's employment, Family Dental never decreased Juarez's pay or benefits and never subjected her to discipline or demotion. Other than the brief period on

February 4, 2004, in which she quit, Juarez remained employed as a Dental Assistant II at all times relevant to this action.

DISCUSSION

I. Standard of Review

The court should grant summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law."[9] In determining the appropriateness of summary judgment, the court must "view the evidence, and draw reasonable inferences therefrom, in the light most favorable to the non-moving party."[10] However, "[t]he mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient [to overcome a motion for summary judgment]; there must be evidence on which the jury could reasonably find for the plaintiff."[11]

II. Motion to Exclude Plaintiff's Affidavit

In addition to filing a motion for summary judgment, the defendant has moved to exclude the affidavit of Juarez that plaintiff's counsel filed in opposition to the defendant's motion for

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[9]Fed. R. Civ. P. 56(c).

[10]*Combs v. PriceWaterhouse Coopers, LLP*, 382 F.3d 1196, 1199 (10th Cir. 2004).

[11]*Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986).

summary judgment. The court grants this motion on the basis Juarez has filed a sham affidavit in order to create an issue of material fact.

In determining whether a genuine issue of material fact exists for summary judgment purposes, an affidavit will not necessarily be precluded simply because it contradicts the affiant's previous sworn statements.[12] The Federal Rules of Civil Procedure allow non-material changes to deposition testimony.[13] Material changes may also be permissible if they satisfy the test adopted in *Burns v. Board of County Commissioners*[14] and *Franks v. Nimmo*.[15] Changes to prior deposition testimony will not satisfy this test if the changes constitute an attempt to create sham fact issues. Relevant factors in assessing the existence of a sham affidavit include: (1) whether the party was cross examined when giving the prior sworn statement, (2) whether the contested evidence was newly-discovered or whether the party had access to the evidence at the time of the previous testimony, and (3) whether the contested evidence attempts to explain confusion the earlier testimony reflected.[16] A change is material if it bears on an essential element of a claim or a defense.[17]

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[12]*Burns v. Bd. of County Comm'rs*, 330 F.3d 1275, 1281 (10th Cir. 2005).

[13]*See* Fed. R. Civ. P. 30(e).

[14]330 F.3d 1275, 1282.

[15]796 F.2d 1230, 1237 (10th Cir. 1986); *see also Jackson v. Kan. County Ass'n Multiline Pool*, 2006 U.S. Dist. LEXIS 20881, *11 (D. Kan. Apr. 10, 2006); *Summerhouse v. HCA Health Servs.*, 216 F.R.D. 502, 508 (D. Kan. 2002).

[16]*Franks*, 796 F.2d at 1237; *see also Burns*, 330 F.3d at 1282 (utilizing the same test).

[17]*Adler v. Wal-Mart Stores, Inc.*, 144 F3d. 664, 670 (10th Cir. 1998).

The Tenth Circuit has articulated the basis for this approach: "the utility of summary judgment as a procedure for screening out sham fact issues would be greatly undermined if a party could create an issue of fact merely by submitting an affidavit contradicting his own prior testimony."[18] If Rule 30(e) were interpreted to allow individuals to alter the statements they made under oath, "one could merely answer the questions with no thought at all then return home and plan artful responses. Depositions differ from interrogatories in that regard. A deposition is not a take home examination."[19]

In this case, Juarez's affidavit seems more like a belated attempt to create an issue of material fact by laundering Juarez's deposition testimony than a simple, nonmaterial clarification of her testimony. In her deposition, Juarez either failed to mention or directly contradicted many of the essential claims in her affidavit—in short, the affidavit differs substantially from the deposition. A few examples of inconsistencies follow. In her affidavit, Juarez indicated she asked Palmer for an explanation after her job title stopped appearing on her pay stubs and he told her she was not entitled to any proof as to why her job title did not appear, without a subpoena. Yet in her deposition, Juarez admitted Palmer explained a computer problem caused the omission of her job title. In her affidavit, Juarez claimed Hight told her she "had no right to counsel until after the internal investigation had concluded."[20] Yet in her deposition, Juarez explained Hight told Juarez she could contact legal counsel, then simply asked Juarez not to do

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[18]*Franks*, 796 F.2d at 1237.

[19]*Garcia v. Pueblo Country Club*, 299 F.3d 1233, 1242 (10th Cir. 2002) (citation and quotations omitted).

[20]Juarez Affidavit in Opposition to Sum. Judg., Docket No. 67, at ¶ 1 (July 14, 2006).

so until after the internal investigation was completed. In her affidavit, Juarez claimed she had to work with Schlotman after she made her sexual harassment complaint. Yet in her deposition, Juarez clarified she was only *told* she would have to work with him—not that she actually did have to work with him. The court finds the changes to the deposition testimony of Ms. Juarez to be material to the issues at hand.

Further, the court concludes Juarez's affidavit constitutes a sham affidavit because it meets each of the elements set out in *Franks* and *Burns*. In *Jackson v. Kansas County Ass'n Multiline Pool*, the court applied *Burns* and found the plaintiffs had submitted sham affidavits.[21] The court based its decision on the fact the plaintiffs were subject to cross-examination during their depositions, even though counsel failed to cross-examine them.[22] Also, the plaintiffs' affidavits did not reflect newly-discovered evidence and the depositions did not reflect confusion.[23] The plaintiffs waited to execute their affidavits until just before they responded to the defendants' motion for summary judgment, and the affidavits contradicted their deposition testimony.[24] For similar reasons, in *Cubie v. Bryan Career College*, the court supported its previous decision to strike the plaintiff's late-filed affidavit.[25] Additionally, the court found it significant that counsel asked the plaintiff about the central issues in the case multiple times and

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[21]2006 U.S. Dist. LEXIS 20881, *12 (D. Kan. Apr. 10, 2006).

[22]*Id.*

[23]*Id.*

[24]*Id.*

[25]2003 U.S. Dist. LEXIS 7326, *6 (D. Kan. Apr. 23, 2003).

the plaintiff had ample opportunity to clarify her testimony while being deposed.[26] Discounting the plaintiff's explanation for filing the affidavit, the court observed that it could "[]not imagine a party who is not nervous during a deposition."[27]

Similarly, in this case, Juarez's counsel was present while Juarez was being deposed, so she was subject to cross-examination. Counsel's failure to take advantage of the opportunity to cross-examine Juarez does not defeat this prong of the test. To hold otherwise would allow a party to undermine the *Franks* test merely by submitting an affidavit contradicting her own prior testimony after the party's counsel chose not to cross-examine her as a witness. Similar to *Cubie*, in this case, defense counsel repeatedly asked Juarez about key components of her complaint—the central issues of the case. In fact, defense counsel appeared to be basing questions on the plaintiff's complaint itself, at times quoting directly from it.[28]

Next, the information in the affidavit is not based on newly-discovered evidence. Plaintiff's counsel argues Juarez did not have access to some of the affidavit evidence at the time of the deposition because she did not have her notes in her physical possession when she was deposed. This argument misses the point. Having "access to the evidence" does not require the deponent to hold her notes in her hands while she testifies. Juarez indicated she wrote the notes at issue prior to the deposition, so she certainly had access to the information they supposedly contained. More important, Juarez was a party to the alleged conversations to which the affidavit refers. Plaintiff's counsel also implies some of the evidence in the affidavit may be newly-

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[26] *Id.* at *3–4.

[27] *Id.* at *3.

[28] *See, e.g.*, Juarez Memo. in Opposition to Sum. Judg., Docket No. 66, Ex. D, at 168–70, 180–82, 184, 243, 245–46 (July 14, 2006) (Margarita Juarez Examination Under Oath).

discovered, in that it relates to incidents occurring after Ms. Juarez's deposition. The court only sees one such reference—an indication that on February 18, 2006, Ms. Juarez told a manager she would seek relief outside of the organization. This reference has no material effect on the summary judgment evaluation.

Juarez's deposition testimony also does not reflect confusion sufficient to justify material alteration. In her affidavit, Juarez explained she could not remember some details of events at the time of her deposition because she "felt under pressure."[29] However, as the court recognized in *Cubie*, it is likely most deponents feel some pressure while testifying. Further, in her deposition, Juarez expressed no confusion on the points the affidavit addresses, and her testimony does not create confusion for the reader. The sole example of confusion plaintiff's counsel provides relates to Juarez's deposition statements that she did not remember the specific, negative comments people had made about her. Juarez's claim she did not remember the comments at the time of her deposition simply does not evince sufficient confusion to require later affidavit evidence for clarification; rather, it points to an inability to recall. But Juarez had multiple chances to correct any confusion or inability to recall in a timely fashion after she gave her deposition. For example, Juarez could have supplemented her deposition if, upon review, she found any answers to be incorrect. The court reporting service sent plaintiff's counsel a copy of Juarez's affidavit on October 18, 2005, along with instructions to make any changes and return it within thirty days. After receiving no response, the court reporting service again sent a copy of the affidavit and instructions on December 14, 2005. Again, plaintiff's counsel failed to respond. On January 4, 2006, defense counsel sent plaintiff's counsel a request for production of

[29]Juarez Affidavit in Opposition to Sum. Judg., Docket No. 67, at ¶ 34 (July 14, 2006).

documents in reference to notes Juarez indicated she kept. Juarez refused to provide the notes to defense counsel, claiming they constituted privileged information. Not only did Juarez fail to respond to any of these opportunities to correct her testimony, she made no independent efforts to do so.

Finally, Juarez's timing in executing this affidavit gives the court pause. Juarez gave her deposition testimony on October 5, 2005, at a time when the incidents would have been more fresh in her memory. Juarez did not execute her affidavit until over nine months later — interestingly, on the same day she filed her memorandum in opposition to the defendant's motion for summary judgment. This timing places the defendant at a disadvantage, depriving Family Dental of any chance to pursue discovery on the subjects covered in the affidavit.

The court finds Juarez's affidavit cannot be seen as simple clarification of her earlier deposition testimony. Instead, it constitutes a sham affidavit filed in order to create an issue of material fact. The court, therefore, excludes the entire affidavit. It is not feasible to exclude only parts of the affidavit because the deposition offers no support for the vast majority of the affidavit. Further, the portions of the affidavit consistent with the deposition are too enmeshed with unsupported assertions to allow the court to reasonably parse through and redact only the groundless portions. As but one example this enmeshment, paragraph two of Juarez's affidavit asserts: "On February 13, 2004, I was transferred to Defendant's Ellis Ship location to accommodate Dr. Schlotman."[30] The record evidence does support that Family Dental transferred Juarez to the Ellis Ship clinic. But the statement as a whole is misleading; Juarez was only transferred there for three days, the first day of the transfer was February 11, 2004, and the

[30]Juarez Affidavit in Opposition to Sum. Judg., Docket No. 67, at ¶ 2 (July 14, 2006).

transfer was to accommodate Juarez's desire to not work with Schlotman again—not to accommodate Schlotman. To try to redact only the contradictory parts of the affidavit would be an impossible task. Accordingly, the court GRANTS the defendant's motion to exclude the affidavit in its entirety.

III. Defendant's Motion for Summary Judgment

For clarity of the record, in the summary judgment analysis, the court will consider the evidence in record before it, but will disregard the statements in Juarez's affidavit as inconsistent with her deposition testimony. Viewing the remaining evidence before the court in the light most favorable to Juarez, the court finds Juarez's claims of retaliation, disparate treatment, *quid pro quo* sexual harassment, and hostile environment based on race and gender fail, as a matter of law. The court will address each claim, in turn.

A. Retaliation

Title VII makes it unlawful for an employer "to discriminate against any of [its] employees . . . because [the employee] has opposed any practice made an unlawful employment practice . . . ."[31] In the absence of direct evidence of retaliation, the court assesses claims under the *McDonnell Douglas* burden-shifting framework.[32] Both parties concede this framework applies to Ms. Juarez's retaliation claim. Under this burden-shifting structure, the plaintiff must first establish a prima facie case of retaliation, then, the burden shifts to the employer to

[31] 42 U.S.C. § 2000e-3(a).

[32] *Medina v. Income Support Div.*, 413 F.3d 1131, 1135 (10th Cir. 2005).

articulate a legitimate, nondiscriminatory reason for the adverse employment decision. From there, the burden returns to the plaintiff to show the stated reason is pretextual.[33]

To establish a prima facie case of retaliation, a plaintiff must show "(1) that he engaged in a protected opposition to discrimination, (2) that a reasonable employee would have found the challenged action materially adverse, and (3) that a causal connection existed between the protected activity and the materially adverse action."[34] Under the anti-retaliation provision, employer actions must be "harmful to the point that they could well dissuade a reasonable worker from making or supporting a charge of discrimination."[35] "The anti-retaliation provision seeks to prevent employer interference with 'unfettered access' to Title VII's remedial mechanisms. . . . And normally petty slights, minor annoyances, and simple lack of good manners will not create such deterrence."[36] Although most of the conduct to which Juarez objects occurred after she engaged in protected opposition to discrimination, she failed to show a reasonable employee would have found the actions materially adverse. Further, the record evidence falls short of showing Family Dental orchestrated, condoned, or encouraged any co-worker harassment Juarez suffered such that Family Dental could be held liable for it.

1. Engaging in Protected Opposition

Juarez provided the court with evidence sufficient to satisfy the first prong of the test for retaliation regarding much of the conduct she describes. Juarez engaged in protected activity by

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[33] *Trujillo v. Univ. of Colo. Health Scis. Ctr.*, 157 F.3d 1211, 1215 (10th Cir. 1998).

[34] *Argo v. Blue Cross & Blue Shield of Kan., Inc.*, 452 F.3d 1193, 1202 (10th Cir. 2006) (citing *Burlington N. & Santa Fe Ry. Co. v. White*, 126 S. Ct. 2405, 2415 (2006))

[35] *White*, 126 S. Ct. at 2409.

[36] *Id.* at 2415.

making a sexual harassment complaint to Family Dental in January 2004. The defendant argues actions Juarez claims constituted retaliation for her DOPL complaints cannot be viewed as retaliation because Juarez's DOPL complaint did not constitute protected activity. However, the record contains nothing by which the court can dissect actions based on the DOPL complaint versus actions based on the initial complaint and, in this case, it does not make sense for the court to construct this seemingly artificial barrier. Viewing the evidence in the light most favorable to the plaintiff, the court finds even if the complaint to DOPL did not constitute protected activity, any actions targeting the plaintiff after her initial sexual harassment complaint may have been spurred by her initial complaint. All retaliatory conduct Juarez alleges occurred after her initial, protected complaint and will be considered for purposes of summary judgment, except for one act, which occurred before Juarez filed her complaint.

Juarez alleges Hight's statement—that she could contact legal counsel, accompanied by a request not to do so until after Family Dental investigated internally—to be retaliatory. This claim fails at the outset because Hight made this request when she confronted Juarez about Schlotman's complaint against Juarez. Only later did Juarez complain to Palmer about Schlotman. Until she first made that complaint, she had not engaged in conduct protected by this provision.

2. Materially adverse action

Although the other conduct Juarez alleged occurred after she complained about Schlotman, the record evidence fails to satisfy the second prong of the test for retaliation—that Family Dental took action against Juarez a reasonable employee would find materially adverse. Juarez contends the actions against her, taken together, were sufficiently severe as to constitute

retaliatory harassment. Even taken together, though, the court cannot conclude Juarez faced harassment severe enough to dissuade a reasonable person from complaining. The Supreme Court first articulated this "reasonable employee" test for retaliation in June 2006,[37] and as of yet, there is minimal guidance on its application. However, consistent with this court's approach in *EEOC v. Body Firm Aerobics, Inc.*,[38] the court will look to the body of law on adverse employment action in substantive Title VII claims as instructive of what a reasonable person would find to constitute adverse action for retaliation purposes.

Under Title VII, to constitute adverse employment action, the employer's conduct must adversely affect an employee's job status.[39] "Although [the court] will liberally construe the phrase adverse employment action . . . the action must amount to 'a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or . . . causing a significant change in benefits."[40] "Mere inconveniences or alterations of job responsibilities do not rise to the level of an adverse employment action."[41] These articulations provide guidance even under the Supreme Court's new test for retaliation. For example, it is not reasonable to think an individual would find "mere inconvenience" or derogatory comments sufficient to dissuade her from filing a complaint. But,

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[37]*See id.* at 2405.

[38]2006 U.S. Dist. LEXIS 48128 (D. Utah July 13, 2006).

[39]*Wells v. Colo. Dep't of Transp.*, 325 F.3d 1205, 1213 (10th Cir. 2003).

[40]*Stover v. Martinez*, 382 F.3d 1064, 1071 (10th Cir. 2004) (quoting *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 761 (1998)).

[41]*Id.* at 1071.

a reasonable complainant would likely find an action which significantly changes her employment status to be an adverse employment action.

(a) Changes in Job Duties and Status

The evidence in the record falls short of supporting Juarez's claim her job duties changed in any materially adverse way after her return from administrative leave. Although a "significant change in employment responsibilities may rise to the level of an adverse employment action,"[42] the changes Ms. Juarez faced were anything but significant. In *EEOC v. Body Firm Aerobics, Inc.*, this court granted the employer's motion for summary judgment on the plaintiff's claims she lost the authority to hire and fire individuals after she lodged a sexual harassment complaint against her supervisor.[43] The court commented on the vagueness of the plaintiff's allegations and found any job changes were not materially adverse.[44] The court distinguished *White*, where the Supreme Court found materially adverse action because the challenged job changes carried less prestige, were "more arduous and dirtier," and objectively equated to a worse job.[45]

Juarez alleges when she returned from administrative leave, she was made a permanent runner and she received an amended job performance plan which deprived her of the ability to supervise other dental assistants. These claims are not borne out by the record. Like the complainant in *Body Firm*, Juarez provided few, if any, details of what supervisory responsibilities she believed she possessed or how these duties changed. Juarez indicated only

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[42]*Stover*, 382 F.3d at 1074.

[43]2006 U.S. Dist. LEXIS 48128, at *14, 22.

[44]*Id.* at *22.

[45]*Id.* (citing and quoting *White*, 126 S. Ct. at 2417).

that, at some point, she returned to her normal duties of solving problems and giving doctor assistant assignments; thus, the court infers Juarez believes she lost these specific supervisory duties. But Juarez admitted Palmer assured Juarez her duties had not changed. Further, Palmer explained that as of January 2004, the individual who made the schedules varied—it was not Juarez exclusively, although she was involved in the overall process. Palmer never removed this responsibility from her; in June 2004, when clinic employees began working five, ten-hour shifts, the dentists, Palmer, and Juarez collaboratively worked to arrange an acceptable schedule. With regard to changes in non-supervisory duties, Juarez claims Palmer told her she would no longer assist doctors. But Juarez belies this claim as well as her claim she was assigned as a "permanent runner" by admitting she still worked as a chairside assistant more than once a week after her return from administrative leave and that part of her duties as Dental Assistant II were to run the clinic. Juarez further undercuts her claim by conceding she often assigns herself to run the clinic because it allows her to oversee the whole picture better and she feels like she is more productive in that position. Dental Assistant II's, who act in this runner capacity, earn higher pay than most Dental Assistant I's, and Juarez admitted being a Dental Assistant II is a more demanding job. Unlike the plaintiff in *White*, therefore, Juarez presented no evidence acting as a runner is any less prestigious or "more arduous and dirtier"[46] than any of her other duties as a Dental Assistant II. In fact, she implied she prefers runner duties and in some ways, these duties carry more prestige.

As further evidence her job duties changed, Juarez points out Palmer offered her a position as a front-desk receptionist and her job title stopped appearing on her pay stubs.

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[46] *White*, 126 S. Ct. at 2417.

Nothing in the record shows these actions were anything more than inconvenient, at most. Palmer's offer to make Juarez a receptionist does not constitute retaliation, as a matter of law. Juarez turned down Palmer's offer and was never made a receptionist. At most, this equates to a failed attempt by Palmer to change Juarez's job duties. Additionally, Juarez admitted knowing the reason her title stopped appearing on her paycheck — a computer problem. Due to this widespread computer problem, many state employees suffered the same inconvenience for the same time period. A system-wide problem does not to constitute actionable retaliation against Juarez.

Last, it is important to note Juarez has effectively continued her employment with Family Dental at all times since first being hired. Neither her pay nor her benefits have decreased, and she has not been disciplined or demoted. A jury could not reasonably conclude Juarez's position, status, or responsibilities changed in any materially adverse way.

(b) Temporary Transfer and Placement on Administrative Leave

Juarez's claims her transfer and placement on administrative leave constituted retaliation also fail. Family Dental transferred Juarez from the Salt Lake clinic to the Ellis Ship clinic from February 11 through February 13, 2004, to keep her from having to work with Schlotman, who was scheduled to see patients at the Salt Lake location on those dates. In one breath, Juarez complains Hight told her she would have to work one-on-one with Schlotman again; in another breath, she complains about Family Dental temporarily transferring her to avoid that situation. Juarez presented no evidence she ever had to work with Schlotman after the trip to Bicknell.

And Juarez admitted she did not see "how [that transfer] could be harassment."[47] The transfer was for an extremely short period of time, appears reasonable given the conflicting claims that faced Family Dental, and complied with Juarez's own request she not be made to work with Schlotman. Further, it did not affect her salary or benefits. In the eyes of a reasonable employee, this transfer could not be materially adverse.

More than a month after Juarez lodged her sexual harassment complaint and just one week after Family Dental learned Juarez complained to DOPL, Family Dental placed her on paid administrative leave. Family Dental placed Schlotman on leave the same day, pending completion of the internal investigation. Juarez presents no evidence tending to show this action constituted retaliation instead of an effort to get to the bottom of conflicting allegations. Juarez also presents no evidence the placement on paid leave was harmful, as required by the Supreme Court in *White*.[48] Such an act could not constitute a materially adverse action to a reasonable employee, especially in light of Family Dental's need to investigate the competing sexual harassment complaints of Juarez and Schlotman.

(c) Threat of Termination and Selective Enforcement of Policies

Juarez claims it constituted a materially adverse action for Shelly Miles, a member of Family Dental management, to tell Juarez she would jeopardize her job if she talked about her complaint against Schlotman or Schlotman's history. This claim fails, as the "verbal threat of being fired is not an 'ultimate employment decision' and does not 'rise above having a mere

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[47]Family Dental Memo. in Support of Sum. Judg., Docket No. 59, Ex. A, at 91 (June 6, 2005) (Margarita Juarez Examination Under Oath).

[48]*White*, 126 S. Ct. at 2417.

tangential effect on a possible future employment decision.'"[49] Miles' exchange with Juarez did not even amount to a threat of termination. To put it in context, Miles told Juarez bringing up Schlotman's prior criminal records in the workplace would jeopardize her job because it could be considered retaliation on her part for the sexual harassment complaint Schlotman made against her. Considering that Miles' warning was clearly designed to further the goals of Title VII, not thwart them, it can not be deemed retaliation.

The record also does not support Juarez's claim Family Dental retaliated against her by selectively enforcing its policies. Upon return from administrative leave, management personnel reminded Juarez she could not wear her scrubs to lunch, she could not use her cellular phone in the office, she could not park in the front of the building, and she needed to enter through the rear door. Although each of these reminders reflects an official Family Dental policy, Family Dental enforced none of the policies regularly before placing Juarez on leave. After Juarez returned from leave, Family Dental reminded all employees of the policies but Juarez believed it to be retaliation that she was reminded first. Plaintiff's counsel tried to bolster Juarez's speculation that Family Dental failed to enforce it policies against other employees by citing Guimond's deposition, but the court cannot reasonably draw a supportive inference from the one page of Guimond's testimony provided. Guimond merely said the policy of not wearing scrubs to lunch is supposed to be enforced and is brought up at staff meetings as a reminder, but he had never personally been involved in a counseling session with anyone regarding it. Neither this statement nor the record evidence is sufficient to support Ms. Juarez's claim of selective enforcement.

(d) Co-worker Harassment

[49] *Seely v. Runyon*, 966 F. Supp. 1060, 1064 (D. Utah 1997).

"[C]o-worker hostility or retaliatory harassment, if sufficiently severe, may constitute 'adverse employment action' for purposes of a retaliation claim."[50] However, an employer may only face liability for co-workers' retaliatory harassment where "its supervisory or management personnel either (1) orchestrate the harassment or (2) know about the harassment and acquiesce in it in such a manner as to condone and encourage the co-workers' actions."[51]

In this case, evidence of Juarez's fellow employees pulling away from her and treating her coldly fails to support an inference of actionable retaliation. Specifically, Juarez felt harassed by the allegedly cold behavior of Case, Vekter, and Palmer. The record shows only that these employees interacted less with Juarez and made occasional rude comments to her or about her. While it was no doubt unpleasant for Juarez to face snide comments and the cold shoulder, "normally petty slights, minor annoyances, and simple lack of good manners"[52] are not actionable under Title VII. Although undesirable, this type of shunning and rejection by co-workers is not sufficiently severe to interfere with Juarez's access to Title VII"s remedial mechanisms in any meaningful way.

Juarez allegedly suffered the most egregious harassment at the hands of Guimond, a co-worker. As offensive as it may have been to be pushed against a wall, followed around, and monitored by Guimond, the record fails to support an inference Family Dental knew of Guimond's conduct or condoned it in any way. There is no evidence Juarez complained of his alleged behavior or Family Dental management had any other reason to know it had occurred.

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[50] *Gunnell v. Utah Valley State Coll.*, 152 F.3d 1253, 1264 (10th Cir. 1998).

[51] *Gunnell*, 152 F.3d at 1265.

[52] *White*, 126 S. Ct. at 2415.

Juarez characterizes a comment by Palmer as evidence that Family Dental supported the co-worker harassment. This is not a reasonable inference. Juarez complained to Palmer co-workers were pulling away from her, and Palmer responded by telling her "that's okay, that's the way how things are going to be after DOPL has set foot in here."[53] Juarez's generic report would not have put Palmer on notice of specific harassment by Guimond, and Palmer's response can be most reasonably seen as an observation employee interactions inevitably change when a licensing agency begins investigating a case. Palmer's observation "[t]here was definitely a difference"[54] in how Juarez was treated following her complaint can be most fairly interpreted in much the same way, especially since Palmer ascribed some of the difference in treatment toward Juarez to Juarez's own altered behavior. It is not reasonable to assume either of Palmer's comments reflected knowledge of specific incidents of harassment directed at Juarez.

Finally, the letters the dentists wrote fail to support an inference of co-worker harassment. The dentists wrote one letter to Family Dental and another to DOPL, addressing the dentists' licensing concerns due to the DOPL complaint. However, there is no indication Juarez knew of this letter until the defense produced it in discovery, and it is not possible for Juarez to feel harassed by a letter of which she had no knowledge. Juarez never mentioned the letter in her deposition, and at the hearing on the summary judgment motion, plaintiff's counsel conceded the letter alone would not constitute retaliation. That Family Dental recommended the dentists put their concerns in writing does not lend to an inference Family Dental orchestrated negative

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[53]Family Dental Memo. in Support of Sum. Judg., Docket No. 59, Ex. A, at 142 (June 6, 2005) (Margarita Juarez Examination Under Oath).

[54]Family Dental Memo. in Support of Sum. Judg., Docket No. 59, Ex. D, at 57 (June 6, 2005) (Mark Palmer Examination Under Oath).

conduct targeting Ms. Juarez. Unless Juarez knew of the letter or Family Dental management used it to harass her, which the record does not support, the court misses the significance of the letter.

Ultimately, the record fails to support an inference Family Dental orchestrated or had knowledge of co-worker harassment targeting Juarez sufficient to impute liability to Family Dental. After *White*, a person may suffer actionable retaliation even without suffering a tangible employment action,[55] but Juarez's allegations are insufficient to establish actionable retaliation. A jury would not reasonably find the actions Juarez alleges, even in totality, would have dissuaded a reasonable employee from making a complaint.

3. Causal connection

To meet the final prong of the test for retaliatory harassment, the plaintiff must prove "that a causal connection existed between the protected activity and the materially adverse action."[56] This requires proof that "the defendant's action was intentionally retaliatory."[57] There is insufficient evidence in the record to find Family Dental's actions were intentionally retaliatory. Based on this and the fact Juarez has not shown Family Dental took materially adverse action against her, the court cannot find a causal connection existed.

Even in aggregate, Ms. Juarez's evidence of retaliation by Family Dental fails to meet the *White* standard. Instead, it shows that she carried out her workdays in basically the same manner she always had. Based on this finding, there is no need for the court to evaluate

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[55]*See White*, 126 S. Ct. at 2415.

[56]*Argo*, 452 F.3d at 1202 (citing *White*, 126 S. Ct. at 2415).

[57]*Gunnell*, 152 F.3d at 1253.

nondiscriminatory reasons offered in support of Family Dental's actions or whether any such reasons are pretextual. The court grants the defendant's motion for summary judgment as it relates to Ms. Juarez's retaliation claim.

B. Disparate Treatment

Juarez also alleges she was disparately treated based on her race or her gender. Under a disparate treatment theory, the plaintiff must show she was treated in a way that "but for" her race or gender would have been different.[58] If the plaintiff only submits circumstantial evidence of her employer's discriminatory intent, the court assesses her claim under the *McDonnell Douglas* burden-shifting framework. To establish a prima facie case of disparate treatment, the plaintiff must show (1) she is a member of a protected class, (2) she suffered an adverse employment action, and (3) similarly situated employees were treated differently.[59] Some courts use a four-part test, but adverse employment action, the key component of the inquiry before the court, is a necessary part of both tests.[60] "Proof of discriminatory motive is critical" to a disparate treatment claim.[61] Although this proof can be based on circumstantial evidence, "[n]ot every difference in treatment . . . will establish a discriminatory intent."[62] "Title VII does not make unexplained differences in treatment per se illegal nor does it make inconsistent or

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[58]*L.A. Dep't of Water v. Manhart*, 435 U.S. 702, 711 (1978).

[59]*Trujillo*, 157 F.3d at 1215.

[60]*Ford v. Am. Airlines, Inc.*, 2006 U.S. Dist. LEXIS 57129, at *38-39 (D. Okla. Aug. 10, 2006); *see also Kendrick v. Penske Transp. Svcs., Inc.*, 220 F.3d 1220, 1227 n.6 (10th Cir. 2000).

[61]*Int'l Bhd. of Teamsters v. United States*, 431 U.S. 324, 334 n.15 (1977)).

[62]*Kendrick*, 220 F.3d at 1232.

irrational employment practices illegal. It prohibits only intentional discrimination based upon an employee's protected class characteristics."[63]

Juarez presented evidence sufficient to satisfy only the first element of a prima facie case of disparate treatment. Juarez is Hispanic and she is female, which makes her a member of a protected class. However, Juarez's claim fails on each of the next two grounds.

First, Juarez failed to present evidence she suffered an adverse employment action. The anti-retaliation provision provides "broader protection for victims of retaliation than for those whom Title VII primarily seeks to protect."[64] It only covers employer actions materially adverse to a reasonable employee,[65] while under Title VII, the action must amount to "'a significant change in employment status'"[66] to be considered adverse. As discussed previously, Juarez's claim fails even under the broader anti-retaliation test for adverse action, therefore, it fails under Title VII's even stricter standard for adverse action. Schlotman's harassment of Juarez based on her gender and race fails to support an inference of gender- or race-based treatment by Family Dental. The court reaches this conclusion, in part, because the record does not show Schlotman acted on behalf of Family Dental when harassing Juarez or that he qualifies as Juarez's employer. Additionally, the record does not support an inference discriminatory motive based on Juarez's race or gender lurked beneath any actions Family Dental took.

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[63] *EEOC v. Flasher*, 986 F.2d 1312, 1319 (10th Cir. 1993).

[64] *White*, 126 S. Ct. at 2414.

[65] *Id.* at 2409.

[66] *Stover*, 382 F.3d at 1071 (quoting *Ellerth*, 524 U.S. at 761).

Next, the record does not support an inference Schlotman was situated similarly with Juarez or was treated significantly differently. To determine if employees are similarly situated, the court must look at the relevant employment circumstances. First, Schlotman's position as a dentist is significantly different than Juarez's position as a Dental Assistant II. There is no evidence Schlotman and Juarez had the same immediate supervisor. Further, even though Schlotman complained about Juarez first, Family Dental placed him on paid administrative leave along with Juarez. No evidence supports an inference Family Dental considered either complaint to carry greater significance— Family Dental investigated both complaints and failed to substantiate both. Juarez points out Schlotman's job, duties, and pay remained the same after she lodged a complaint against him. As discussed previously, Juarez's job and pay also remained the same, and her duties did not change in any significant fashion. A reasonable jury would find, therefore, Juarez made no showing she was treated differently in any notable way.

Because Juarez has not made out a prima facie case under the theory of disparate treatment, the court does not address whether the Family Dental has met its burden by articulating a legitimate, nondiscriminatory reason for any actions it took or whether Juarez has shown such explanation to be pretextual. The court grants the defendant's motion for summary judgment on this claim.

C. Quid Pro Quo *Sexual Harassment*

An employer violates Title VII if it takes actions on the basis of sex, "discriminat[ing] against any individual with respect to his compensation, terms, conditions, or privileges of employment."[67] To establish she suffered *quid pro quo* sexual harassment, a plaintiff must show

[67]42 U.S.C. 2000e-2(a)(1).

"tangible job benefits are conditioned on an employee's submission to conduct of a sexual nature and that adverse job consequences result from the employee's refusal to submit to the conduct."[68] Unfulfilled threats of tangible employment action are better characterized as hostile environment claims.[69] Employers are liable for *quid pro quo* sexual harassment by supervisors because the supervisor "wields the employer's authority to alter the terms and conditions of employment."[70] "Only a supervisor of an employee may commit *quid pro quo* sexual harassment because only a supervisor has authority to alter the terms and conditions of an employee's employment."[71]

In this case, the record fails to disclose any suggestion made to Juarez conditioning her employment or any related benefits, either explicitly or implicitly, on acquiescing to Schlotman's advances. Schlotman allegedly offered to pay Juarez $100 for sexual favors. This proposition, while repulsive, was void of any suggestion Juarez's position or benefits at Family Dental could be enhanced if she acquiesced or lessened if she refused. In other words, Schlotman allegedly proposed a *quid pro quo* between himself and Juarez — not between Family Dental and Juarez. The necessary link between any negative consequences suffered by Juarez and her refusal to acquiesce cannot be inferred from the record. Further, this is not a case where Juarez suffered an unfulfilled threat of tangible employment action. This is a case where no threat was made at all. Plaintiff's counsel points to an "implicit threat" of negative consequences based solely on Dr. Schlotman's status as a dentist and on his angry, insulting behavior on the return trip from

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[68] *Hicks v. Gates Rubber Co.*, 833 F.2d 1406, 1414 (10th Cir. 1987).

[69] *See Ellerth*, 524 U.S. at 753–54.

[70] *McPherson v. HCA-HealthOne, LLC*, 202 F. Supp.2d 1156, 1168 (D. Colo. 2002); *see also Ellerth*, 524 U.S. at 753–54.

[71] *McPherson*, 202 F. Supp.2d at 1169.

Bicknell. This implicit threat is insufficient to meet this prong; otherwise, employers would be liable for all supervisor harassment as supervisors necessarily have greater status.[72] "[A] supervisor's power and authority invests his or her harassing conduct with a particular threatening character."[73] Nonetheless, this status alone is insufficient to impute liability to employers for all supervisor conduct.[74] Similarly, Schlotman's status as a dentist is insufficient to impute liability to Family Dental. This is especially true where Schlotman occupied no supervisory position over Juarez.

Even if Juarez had been subject to *quid pro quo* harassment, therefore, Family Dental would not face liability for Schlotman's actions because Schlotman did not occupy a supervisory position over Juarez — he had no power to use employment actions to reward or punish her. The functional question in assessing supervisory status is whether the harasser "had sufficient control over the plaintiff to be considered her supervisor."[75] *McPherson v. HCA-HealthOne, LLC*[76] is instructive here. In *McPherson*, the court found a doctor did not qualify as supervisor of a nurse, even where the doctor supervised the nurse during surgery and provided feedback regarding her work. This was because the doctor possessed no authority to directly affect the terms and conditions of the nurse's employment. The court concluded "[a]t best, one might suggest [the physician] possessed certain 'non-supervisory authority' over plaintiff. 'However, the mere

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[72] *See Ellerth*, 524 U.S. at 760.

[73] *Id.* at 763.

[74] *Id.* at 763–64.

[75] *Wright-Simmons v. City of Okla.*, 155 F.3d 1264, 1271 (10th Cir. 1998).

[76] *McPherson v. HCA-HealthOne, LLC*, 202 F. Supp.2d 1156, 1168 (D. Colo. 2002).

delegation of non-supervisory authority to [a person] does not give rise to employer liability . . . .'"[77]

As with the physician in *McPherson*, Schlotman possessed no authority to directly affect any terms or conditions of Juarez's employment, even if he possessed non-supervisory authority over her dental work. No evidence shows Schlotman at any time had authority over Juarez's hiring, firing, assignments, discipline, or other employment conditions. Hight hired Juarez, and Palmer acted as her direct supervisor. Palmer gave Juarez her work assignments and Palmer authorized her to travel to Bicknell. Juarez admitted knowing dentists had no supervisory authority over dental assistants at Family Dental and admitted no one at Family Dental told her Schlotman held supervisory authority over her. Four times, she even referred to Schlotman as a "co-worker" in the Charge of Discrimination she filed with the Utah Anti-Discrimination and Labor Division on July 14, 2004 — not once did she refer to him as her supervisor.

However, Juarez claims Palmer placed Schlotman in a position of apparent supervisory authority over her when he sent them on the trip together, with no management personnel present. She implies Schlotman's agency relationship with Family Dental aided him in the accomplishment of his offensive behavior because he would not have been in Bicknell with Juarez but for his job. However, an employment relationship itself is not enough to establish an "aided in agency relation" standard.[78] This is because "[i]n a sense, most workplace torfeasors are aided in accomplishing their tortious objective by the existence of the agency relation."[79]

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[77]*McPherson*, 202 F. Supp.2d at 1169 (quoting *Hirschfeld v. N.M. Corrs. Dep't*, 916 F.2d 572, 580 n.7 (10th Cir. 1990)).

[78]*Ellerth*, 524 U.S. at 759.

[79]*Id.*

Juarez's belief Schlotman occupied a supervisory position on the trip by virtue of his position as a dentist and the very fact of the trip is not reasonable. Schlotman did not hold supervisory authority over Juarez at other times, and no evidence suggests he possessed any such authority on the trip.

The court grants summary judgment to the defendant on Juarez's *quid pro quo* claim as Juarez has failed to present evidence to support the elements of *quid pro quo* harassment and failed to show Schlotman possessed supervisory authority over her.

D. Gender- and Race-Based Hostile Environment

Juarez also claims racial and sexual discrimination created a hostile or abusive work environment in violation of Title VII. Although the court recognizes race- and gender-based hostile work environment as separate claims, for summary judgment purposes, the court chooses to assess these claims together. This approach is appropriate because the elements and defenses of race- and gender-based hostile environment claims mirror each other and the court "can aggregate evidence of racial hostility with evidence of sexual hostility to establish a hostile work environment."[80]

To survive summary judgment on a race or sex discrimination claim, the court must find support in the record for an inference of a racially or sexually hostile work environment and must find a basis for employer liability.[81] A plaintiff can only maintain a hostile environment action under Title VII if "the harassment was pervasive or severe enough to alter the terms, conditions,

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[80] *Smith v. Norwest Fin. Acceptance*, 129 F.3d 1408, 1413 (10th Cir. 1997); *see also Hicks*, 833 F.2d at 1414.

[81] *Trujillo*, 157 F.3d at 1214 (quotations omitted).

or privilege of employment" and the harassment was based in race or gender animus.[82] Such workplace conduct is assessed "by 'looking at all the circumstances,' including the 'frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance."[83] Severity and pervasiveness must be judged objectively and subjectively.[84] The evaluation includes gender- and race-neutral conduct, as long as the factfinder can reasonably infer the conduct was related to gender or race.[85] "[A] few isolated incidents of racial enmity are insufficient to survive summary judgment."[86] The discrimination must be the employer's "standard operating procedure — the regular rather than the unusual practice."[87]

In this case, any factual dispute is immaterial because if an abusive work environment existed, it did not alter the conditions of Juarez's employment. Further, there is no legitimate basis for holding Family Dental liable for much of the objectionable behavior. Juarez offers the same allegations in support of her hostile environment claim as she offered in support of her retaliation claim. And just as a reasonable jury could not find the conduct to be materially adverse for retaliation purposes, a reasonable jury could not find it to be so severe or pervasive as to alter the conditions of Juarez's employment or impede her ability to do her job.

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[82] *Id.* (quotations omitted).

[83] *Clark County Sch. Dist v. Breeden*, 532 U.S. 268, 270–71 (2001) (quoting *Faragher v. Boca Raton*, 524 U.S. 775, 787-88 (1998)).

[84] *O'Shea v. Yellow Tech. Svcs., Inc.*, 185 F.3d 1093, 1097 (10th Cir. 1999).

[85] *Id.*

[86] *Trujillo*, 157 F.3d at 1214.

[87] *Pitre v. W. Elec. Co., Inc.*, 843 F.2d 1262, 1267 (10th Cir. 1988).

Further, it is not reasonable to infer the conduct stemmed from racial or gender animus by Family Dental. While Juarez may disagree with how Family Dental treated her, absent a showing any negative treatment was *due to her race or gender*, her disagreement is not actionable under Title VII. Not only is there no independent basis to infer Family Dental's conduct was based on race or gender, it is not reasonable to infer the sex- and race-related conduct of Schlotman so poisoned Family Dental or its other employees toward Juarez that their conduct arose out of gender- or race-related hostility.[88] Whatever the case with Schlotman's sex- and race-based motivation, it does not necessarily reflect the motivation of other employees or of Family Dental. Without some kind of broader extension beyond Schlotman, therefore, this conduct cannot support Juarez's hostile environment claim.

Even when considered in light of the additional evidence Juarez recites, a reasonable jury could not find Juarez faced a hostile environment. Although based on race and sex, no reasonable person could believe Schlotman's treatment of Juarez in Bicknell, demeaning and offensive though it may be, was so severe or pervasive as to alter the conditions of Juarez's employment — particularly given Family Dental's quick and strong response to the allegation. Also, Schlotman's racially derogatory comments on the way back from Bicknell, Vekter's statement Family Dental management would not believe Juarez because of her race, and Hight's questions about Juarez's accent and background collectively only qualify as a "few isolated incidents,"[89] at most. Nothing in the record supports finding Juarez to be a victim of on-going mistreatment because of her race or gender or finding discrimination to be Family Dental's

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[88] *See Chavez v. New Mexico*, 397 F.3d 826, 837 (10th Cir. 2005) (noting it is a great inferential leap to impute the harasser's motive to the gender-neutral conduct of co-workers).

[89] *Trujillo*, 157 F.3d at 1214.

"standard operating procedure."[90] Further, the evidence could not convince a reasonable person the terms and conditions of Ms. Juarez's employment were altered.

Moreover, a jury could not reasonably find Family Dental liable for the race- and sex-based conduct of Schlotman and Juarez's other fellow employees. An employer will be liable if its supervisory personnel harassed subordinates and the harassment resulted in a tangible employment action, even if the employer stopped further harassment.[91] As discussed in conjunction with the *quid pro quo* claim, the record does not show Schlotman occupied a supervisory position over Juarez. Based on this finding, the court sees no need to further explore this issue or to address the possibility of a *Faragher* defense.[92]

As plaintiff's counsel points out, a basis for employer liability also exists when an employer is negligent or reckless. To support a claim Family Dental negligently allowed supervisors and employees to harass Juarez, Juarez must show Family Dental "had actual or constructive knowledge of the hostile work environment but did not adequately respond to notice of the harassment."[93] To show actual knowledge, Juarez must establish she reported the harassment to Family Dental management personnel.[94] To show constructive knowledge, Juarez must establish the harassment was "so egregious, numerous, and concentrated as to add up to a

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[90]*Pitre*, 843 F.2d at 1267.

[91]*Gunnell*, 152 F.3d at 1261.

[92]*See Faragher*, 524 U.S. at 787–88.

[93]*Adler*, 144 F.3d at 673; *see also* 29 CFR 1604.11(d).

[94]*Ford v. West*, 222 F.3d 767, 776 (10th Cir. 2000).

campaign of harassment."[95] This is a greater burden than the burden required to prove a hostile environment claim.[96] "To infer employer knowledge from only the level of pervasiveness essential to make out a hostile environment claim would be illogical because if that were the rule, knowledge would be attributed to employers in all cases of hostile work environment founded on pervasiveness."[97]

The evidence before the court fails to supports an inference Family Dental knew or should have known of most of the alleged co-worker harassment. Juarez reported Schlotman's sexual advances and reported her fellow employees withdrawing from her, but she reported no other incidents. Juarez did not even report the race-based comments Schlotman made while returning from Bicknell. Additionally, it is not reasonable to infer Family Dental had constructive knowledge of any other incidents. The harassment, in aggregate, did not even measure up to the standard of a hostile environment; it certainly did not add up to a "campaign" sufficient to impute knowledge to Family Dental.

Further, a jury could not reasonably hold Family Dental liable for the events Ms. Juarez actually reported because Family Dental "adequately respond[ed] to notice of the harassment."[98] Adequacy of response is assessed by asking if the preventative or remedial action was "reasonably calculated to end the harassment."[99] "A stoppage of harassment shows effectiveness

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[95] *Id.*

[96] *Id.*; *see also Adler*, 144 F.3d at 673.

[97] *Ford*, 222 F.3d at 776.

[98] *Adler*, 144 F.3d at 673; *see also* 29 CFR 1604.11(d).

[99] *Adler*, 144 F.3d at 676 (citation and quotations omitted).

which, in turn, evidences such reasonable calculation."[100] After Juarez lodged a complaint against Schlotman, Schlotman did not harass her again. Family Dental promptly investigated the complaint and swiftly placed Schlotman on administrative leave — both reasonable measures to prevent future harm to Juarez. Family Dental accommodated Juarez's request to not work with Schlotman by transferring her to another clinic during a three-day period in which Schlotman would be seeing patients in the Salt Lake clinic. Approving Juarez's sick leave enabled Juarez to seek medical treatment and allowed her to avoid contact with Schlotman. Further, despite the fact management personnel told Juarez she would have to work with Schlotman again, the record does not show Juarez ever actually did work with Schlotman after she lodged a complaint. Family Dental also responded adequately to the notice of employees withdrawing from Juarez. As discussed previously, this "shunning" did not constitute actionable harassment, so nearly any response by Family Dental to this complaint would be, and was, adequate.

Because Juarez has not made out a prima facie case of race- or sex-based hostile environment, the court does not address whether Family Dental has met its burden by articulating a legitimate, nondiscriminatory reason for its actions or whether Juarez has shown the reasons to be pretextual. The court grants the defendants' motion for summary judgment as it relates to Juarez's claims of race- and gender-based hostile work environment.

As a final note, the court recognizes plaintiff's counsel alleged numerous other facts and the court has reviewed them. However, the court finds many of the facts alleged constitute mischaracterizations of record evidence, and many are irrelevant or unsupported by the record.

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[100] *Id.*

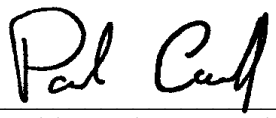
CONCLUSION

The court, therefore, GRANTS Family Dental's motion to exclude the affidavit Margarita Juarez submitted with her memorandum in opposition to Family Dental's motion for summary judgment [#72], and GRANTS Family Dental's motion for summary judgment as it pertains to all of Juarez's claims [#58].

SO ORDERED.

DATED this 11th day of September, 2006.

BY THE COURT:



Honorable Paul G. Cassell
United States District Court

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

BOMAN & KEMP REBAR, INC., a Utah corporation, and BOMAN & KEMP MANUFACTURING, INC., Plaintiffs, v. J.D. STEEL COMPANY, INC., an Arizona corporation, Defendants.	MEMORANDUM DECISION AND ORDER GRANTING IN PART PLAINTIFF'S MOTION FOR USE OF DEPOSITIONS IN COURT PROCEEDINGS Case No. 2:05-CV-00199 TC District Judge Tena Campbell Magistrate Judge David Nuffer

Boman & Kemp wants to use 35 deposition transcripts and hareingtranscripts from a 24 day arbitration proceeding involving the same facts as in this case.[1] In that arbitration, Boman & Kemp defended claims that rebar installed by J.D. Steel, which acted as Boman & Kemp's subcontractor, was not in accordance with industry standards.[2] This order permits the use of depositions and the hearing testimony on motions.

Background

Boman & Kemp Rebar, Inc., contracted to provide rebar for the Oqurriah Park Speed Skating Oval in connection with Salt Lake City's participation in the 2002 Winter Olympics. J. D. Steel Company, Inc., was Boman & Kemp's subcontractor for the rebar installation. Unfortunately, the initial installation was removed because of claims of defects and Boman &

[1] Plaintiffs' Motion for Use of Depositions in Court Proceedings, docket no. 22, filed July 27, 2006; Reply Memorandum in Support of Plaintiffs' Motion for Use of Depositions in Court Proceedings (Reply Memorandum) at 1, docket no. 26, filed August 21, 2006.

[2] Memorandum in Support of Plaintiffs' Motion for Use of Depositions in Court Proceedings (Supporting Memorandum) at 1, docket no. 23, filed July 27, 2006.

Kemp was sued by the party with whom Boman & Kemp had contracted.[3] An arbitration clause moved the dispute before the American Arbitration Association.[4] Though invited, J.D. Steel declined to participate.[5]

The arbitration ruling shows that the work performed by J.D. Steel was a principal issue.[6] Boman & Kemp says it defended primarily on the grounds that J.D. Steel's work was done in accordance with industry standards and that many claims asserted were outside the scope of J.D. Steel's work.[7] Boman & Kemp also says "J.D. Steel's representative and counsel were present during the depositions and testimony of several J.D. Steel's employees"[8] and that "J.D. Steel has had the deposition and hearing transcripts in its possession for several months."[9] J.D. Steel, however, says that it "requested to attend and monitor the arbitration proceeding, however the parties to that proceeding denied J.D. Steel's counsel admittance."[10]

Boman & Kemp wants the court to rule "that the depositions and hearing transcripts from the arbitration proceeding may be used as if originally taken in this action."[11] There are two aspects to the request. First, that "Boman & Kemp should be allowed to use the testimony in filing motions or defending against motions in this action;" and, second that Boman & Kemp

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[3] *Commercial Refrigeration, Inc., v. Layton Construction Co., Inc., et a*l., Civil No. 2:01 CV 210 DB, District of Utah.
[4] The ruling in arbitration (Arbitration Ruling) is attached to the Supporting Memorandum as Exhibit A.
[5] Supporting Memorandum at 3, ¶ 9.
[6] Arbitration Ruling at 2-5.
[7] Supporting Memorandum at 4, ¶ 10.
[8] *Id.* ¶ 11.
[9] Reply Memorandum at 2.
[10] Defendant J.D. Steel Company, Inc.'s Memorandum in Opposition to Plaintiffs' Motion for Use of Depositions in Court Proceedings (Opposition Memorandum) at 3, docket no. 25, filed August 8, 2006
[11] Supporting Memorandum at 5.

should be allowed to use the depositions at trial so it does not have to "ensure that all 35 individuals are available during the trial."[12]

Discussion

Rule 32(a)(4), Federal Rules of Civil Procedure, provides that all depositions lawfully taken and duly filed in a prior action involving the same subject matter, between the same parties or their representatives or successor in interest, may be used in a subsequent action as if originally taken in the later case. Boman & Kemp claims that it had an identity of interest with J.D. Steel in the prior case and arbitration.[13]

J.D. Steel claims that Rule 32(a)(4) does not end the inquiry and that Fed. R. Evid. 804(b)(1) bars use of the depositions and arbitration testimony in this case:

> The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:
> Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

The evidence rule is more restrictive than Rule 32(a)(4) by requiring the prior opportunity to cross examine to be held by *the same party* or its *predecessor in interest*. The restriction is deliberate. As submitted to Congress, Rule 804(d) "allowed prior testimony of an unavailable witness to be admissible if the party against whom it is offered or a person 'with motive and interest similar' to his had an opportunity to

[12] *Id.*
[13] Supporting Memorandum at 4.

examine the witness."[14] Congress narrowed the rule so that prior testimony is allowed only when the party or the "party's predecessor in interest in a civil action or proceeding had an opportunity and similar motive to examine the witness."[15] Because J.D. Steel was not a party to the prior case and arbitration, it claims the depositions are inadmissible hearsay. Boman & Kemp is not a predecessor in interest to J.D. Steel; just a party with similar interests. Further, J.D. Steel says there is no evidence the witnesses are unavailable as the rule of evidence requires. Therefore, Bowman & Kemp may be unable to use the depositions in lieu of testimony at trial. That decision remains for the district judge.

As to motions, however, there is no barrier to use of the depositions and hearing transcripts, just as any other sworn statement, in support of a motion. Of course, the offered evidence may be contested by contrary sworn statements, but there is no reason to degrade statements given under oath in another proceeding. And the same deposition and hearing transcripts are available to impeach a witness testifying at trial because they are not hearsay in that event.[16]

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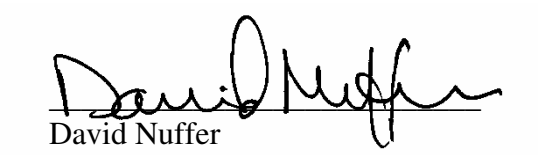
[14] 8A Charles Alan Wright, et al., *Federal Practice and Procedure* §2150 (quoting report of House Committee on the Judiciary).
[15] *Id.*
[16] Fed. R. Evid. 801(d).

ORDER

IT IS HEREBY ORDERED that Plaintiffs' Motion for Use of Depositions in Court Proceedings[17] is GRANTED IN PART.

Dated this 12th day of September, 2006.

BY THE COURT



David Nuffer
United States Magistrate Judge

[17] Docket no. 22, filed July 27, 2006.

IN THE UNITED STATES DISTRICT COURT FOR THE

DISTRICT OF UTAH, CENTRAL DIVISION

TURNER GAS COMPANY, a Nevada corporation, Plaintiff and Counterclaim Defendant, vs. MARK A. HARRIS, an individual; SERVICES GROUP, INC.; KAMPS COMPANY; KAMPS PROPANE, INC.; ECONOMY TRANSPORT, INC.; and WHOLESALE SERVICES, INC.; corporations, Defendants and Counterclaimants.	BY: DEPUTY CLERK **ORDER GRANTING MOTION TO COMPEL** Civil No. 2:05-CV-00441 TC Judge Tena Campbell Magistrate Judge Brooke C. Wells

This matter came before the Court as previously scheduled on Tuesday, August 15, 2006 at 10:00 a.m. before the Honorable Brooke C. Wells, United States Magistrate Judge, at 350 South Main Street, Room 436, Salt Lake City, Utah. The Plaintiff was represented by its counsel of record Matthew C. Barneck and Mark L. McCarty of Richards, Brandt, Miller & Nelson. The Defendants were represented by Kevin D. Swenson of Suitter Axland. The Court having reviewed the Motion, Memoranda, and exhibits submitted by the parties, and oral argument by counsel for both sides, now hereby ORDERS as follows:

1. Plaintiff's Motion to Compel dated May 4, 2006 is granted.

2. The Defendants' relevance objections are overruled, and the Defendants Kamps Company, Services Group, Inc., Kamps Propane, Inc., Economy Transport, Inc., Wholesale Services, Inc., and KIVA Energy, Inc. are ordered to produce documents and provide information

as sought in the following discovery requests served by the Plaintiff for the time period of February 8, 2005 through June 30, 2006:

a. Request Nos. 1-21 of Plaintiff's Third Request for Production of Documents dated February 1, 2006.

b. Interrogatory No. 4 of Plaintiff's Second Interrogatories to Defendant Kamps Company dated February 1, 2006.

c. Request Nos. 1-2 of Turner's Fourth Request for Production of Documents dated February 22, 2006.

d. Request No. 5 of Plaintiff's Fifth Request for Production of Documents dated March 7, 2006, subject to redaction as specified in the Request.

3. The Court overrules Defendants' overly broad and unduly burdensome objections and also addresses the responses which state "this Defendant" does not have responsive documents in its possession. With respect to the following discovery requests, Defendants Mark A. Harris, Kamps Company, Services Group, Inc., Kamps Propane, Inc., Economy Transport, Inc., Wholesale Services, Inc., and KIVA Energy, Inc. must produce verification in the form and manner described below that they have conducted a diligent search for documents and information responsive to the following requests:

a. Request Nos. 1-3 of Plaintiff's Second Request for Production of Documents dated November 18, 2005, as made more specific by the letter of Plaintiff's counsel dated February 23, 2006 and the enclosed list of "Types of Documents from Kamps" Nos. 1.a.-m., and the letter dated March 15, 2006, each of which were included in Exhibit 7 of the Memorandum in Support of Plaintiff's Motion to Compel.

b. Interrogatory No. 4 of Plaintiff's Second Interrogatories dated

February 1, 2006, as made more specific by the letter of Plaintiff's counsel dated March 15, 2006, referenced above.

c. Request Nos. 1-4 of Plaintiff's Third Request for Production to Defendant Harris dated March 7, 2006.

d. Request Nos. 1-4 of Plaintiff's Fifth Request for Production to Defendant Kamps Company dated March 7, 2006.

4. Defendants are ordered to conduct a diligent search of all documents and information in their possession or control that are responsive to the discovery requests referenced in paragraph 3 above. On or before September 15, 2006, Defendants must serve supplemental responses to Requests for Production and supplemental Answers to Interrogatories, with supporting Affidavits, describing in detail the nature and extent of the search they have conducted, and include at least the following information:

a. The person(s) who conducted or participated in such searches.

b. The date(s) on which such searches were conducted.

c. A description of each source of documents or information searched.

d. If a document does not exist, a statement as to whether the document never existed, or once existed but was deleted or destroyed.

e. If a document no longer exists, a statement as to when it was deleted or destroyed, where it was last located, and the name(s) of the individual(s) who had responsibility for maintaining it.

f. If a document exists but is not in the possession or control of any named Defendant, a statement identifying the person or entity who possesses or controls it. To the extent the supplemental Responses or Answers produce responsive documents or information,

no such Affidavits are required.

5. The duties of the Defendants as described in this Order apply equally to hard copy documents and to documents or information created, stored, or maintained electronically.

6. The Court imposes a "litigation hold" as of August 15, 2006 upon documents in the possession of any Defendant that the Defendants know or reasonably should know are relevant in this action, are reasonably calculated to lead to the discovery of admissible evidence, are reasonably likely to be requested during discovery, and/or are the subject of pending or previously served discovery requests. *Zubulake v. UBS Warburg LLC, et al.*, 220 F.R.D. 212, 217 (S.D.N.Y. 2003). No such documents are to be destroyed or deleted. The Court reserves for further order the determination of when the Defendants' obligation to preserve evidence attached, *i.e.* when they reasonably anticipated litigation, and the determination of whether any such evidence was improperly deleted or destroyed.

7. The hearing on Plaintiff's Motion to Compel will remain open and will reconvene on Tuesday, September 26, 2006 at 10:00 a.m., unless the parties notify the Court that such further hearing is unnecessary.

8. The Court takes under advisement Plaintiff's request for attorney fees and costs in connection with its Motion to Compel.

IT IS SO ORDERED.

DATED this 11th day of September, 2006.

BY THE COURT:

Brooke C. Wells

HONORABLE BROOKE C. WELLS
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

AMERICAN ATHEISTS, INC., *et al.*, Plaintiffs, vs. **COLONEL SCOTT T. DUNCAN**, *et al.*, Defendants, **UTAH HIGHWAY PATROL ASSOCIATION,** Intervenor-Defendant.	Case No.: 02:05-CV-00994 DS **ORDER DENYING PLAINTIFFS' MOTION FOR JUDGMENT ON THE PLEADINGS** Judge David Sam

Plaintiffs moved this Court for judgment on the pleadings, and all the parties were heard on the motion on August 3, 2006, at 10:00 a.m. before the Honorable David Sam. Appearing for the Plaintiff was Brian M. Barnard, attorney at law. Appearing for the Defendants was Thom D. Roberts, Assistant Attorney General. Appearing for the Intervenor-Defendant Utah Highway Patrol Association was Byron J. Babione, Senior Legal Counsel with the Alliance Defense Fund, and Frank D. Mylar, attorney at law. The Court having heard the parties' arguments and considered the papers of the parties submitted on the motion and in the record, Orders and Adjudges that the motion for judgment on the pleadings is denied based on the following grounds:

1. Plaintiffs' motion for judgment on the pleadings under Rule 12(c) is improper.
2. Plaintiffs' motion is properly that of a motion to strike under Rule 12(f).
3. Plaintiffs' motion must therefore be denied as untimely under Rule 12(f).

4. Alternatively, Plaintiffs' motion is denied on the merits, as Plaintiffs have not carried their burden under 12(f).

SO ORDERED.

DATED this 5th day of September, 2006.

David Sam
Senior Judge
United States District Court

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

DMITRI ASENOV, Plaintiff, v. UNIVERSITY OF UTAH, et al., Defendants.	ORDER DENYING MOTION FOR PROTECTIVE ORDER and NOTICE OF INITIAL PRETRIAL CONFERENCE Case No. 2:05 CV 1030 TC District Judge Tena Campbell Magistrate Judge David Nuffer

Defendants moved for a protective order[1] against interrogatories propounded by Plaintiff,[2] claiming that the 18 numbered interrogatories contained in four pages actually constitute 85 or 94 interrogatories.[3] The heart of Defendants' argument is mathematical: "Interrogatory No. 1 of Plaintiffs interrogatories to each Defendant contains four discrete subparts. Each of those discrete subparts operates as a discrete subpart of each of the other 17 interrogatories."[4]

Interrogatory No. 1 reads:

> 1. For each of the following Interrogatories:
> (a) Describe in detail the source of all information that is produced;
> (b) Describe in detail all efforts you made by you [sic] to obtain or investigate responsive information and/or documents;
> (c) Identify each person who was contacted or requested to provide information in response thereto; [and]
> (d) Identify each document from which you obtained information used in your response.

[1] Docket no. 18, filed August 7, 2006.
[2] The interrogatories are attached as exhibits to the Memorandum in Support of Defendants' Rule 26(c) Motion for Protective Order (Supporting Memorandum), docket no. 19, filed August 7, 2006.
[3] *Id.* at 3.
[4] *Id.* at 5.

Defendants' argument is novel but must be rejected. If this standard interrogatory seeking foundation for answers were construed exponentially across other interrogatories, the discovery process would be frustrated.

Careful reading of the interrogatories as a whole does not show them to be anything other than a genuine and effective attempt to obtain fundamental information before proceeding to depositions or motions. They are not burdensome. The courts must allow legitimate uses of discovery methods "to secure the just, speedy, and inexpensive determination of every action."[5] There is no basis for a protective order.

ORDER

IT IS HEREBY ORDERED that the motion for protective order[6] is DENIED.

IT IS FURTHER ORDERED that this case is set for an initial pretrial conference Wednesday October 11, 2006 at 2:30 PM in Room 436 before Magistrate Judge Brooke Wells. The parties should promptly file an Attorneys Planning Meeting Report (noting any disputes and referring to this order) and should submit a Proposed Scheduling Order using the form available on the court web site at http://www.utd.uscourts.gov/documents/formpage.html. See instructions at http://www.utd.uscourts.gov/documents/ipt.html

Dated this 12th day of September, 2006.

BY THE COURT

David Nuffer
United States Magistrate Judge

[5] Fed. R. Civ. P. 1.
[6] Docket no. 18, filed August 7, 2006.

PS8 (1/05)

United States District Court
for the
District of Utah

Request and Order to Amend Conditions of Pretrial Release

Name of Defendant: **Eric Vasquez** Docket Number: **02:06-cr-00006 TC**

Name of Judicial Officer: **Honorable David O. Nuffer, United States Magistrate Judge**

Date of Release: **August 15, 2006**

PETITIONING THE COURT

[X] To amend the conditions of pretrial release as follows:

Participate in work search/work release as directed by Pretrial Services.

CAUSE

The defendant has been in compliance of conditions since release. Assistant United States Attorney, Mark Vincent has been contacted by Pretrial Services, and has no objection to amending conditions of release to include work release from the Cornell Facility.

I declare under penalty of perjury that the foregoing is true and correct

Tom Ogden , U.S. Pretrial Services Officer
Date: September 6, 2006

THE COURT ORDERS:

[✓] That the conditions of pretrial release be amended as outlined above.

[ ] No action

[ ] Other

Honorable David O. Nuffer
United States Magistrate Judge

Date: 9/11/06

UNITED STATES DISTRICT COURT

Central District of Utah

UNITED STATES OF AMERICA
V.
JAIME ENRIQUE OLIVARRIA-LORA

JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX206CR000019-001

USM Number: 13215-081

Bel-Ami de Montreux
Defendant's Attorney

THE DEFENDANT:

☑ pleaded guilty to count(s) 1 of the Indictment

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

☐ was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21 USC § 841(a)(1)	Possession of Methamphetamine With Intent to Distribute		1

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

9/6/2006
Date of Imposition of Judgment

Signature of Judge

Paul Cassell — US District Judge
Name of Judge — Title of Judge

9/11/06
Date

DEFENDANT: JAIME ENRIQUE OLIVARRIA-LORA
CASE NUMBER: DUTX206CR000019-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

168 months

☑ The court makes the following recommendations to the Bureau of Prisons:

Placement in a facility as close to Southern Ca. as possible to facilitate family visitation and drug treatment if space is available

☑ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____ .

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____ .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: JAIME ENRIQUE OLIVARRIA-LORA
CASE NUMBER: DUTX206CR000019-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

60 months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

☑ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)

☑ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall not illegally reenter the United States. If the defendant returns to the United States during the period of supervision, he/she is instructed to contact the United States Probation Office in the District of Utah within 72 hours of arrival in the United States.

DEFENDANT: JAIME ENRIQUE OLIVARRIA-LORA
CASE NUMBER: DUTX206CR000019-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$ 100.00	$	$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage

TOTALS	$ 0.00	$ 0.00

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: JAIME ENRIQUE OLIVARRIA-LORA
CASE NUMBER: DUTX206CR000019-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

A ☑ Lump sum payment of $ 100.00 due immediately, balance due

☐ not later than _____ , or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

DEFENDANT: JAIME ENRIQUE OLIVARRIA-LORA
CASE NUMBER: DUTX206CR000019-001
DISTRICT: Utah

STATEMENT OF REASONS

(Not for Public Disclosure)

I COURT FINDINGS ON PRESENTENCE INVESTIGATION REPORT

A ☐ **The court adopts the presentence investigation report without change.**

B ☐ **The court adopts the presentence investigation report with the following changes.**
(Check all that apply and specify court determination, findings, or comments, referencing paragraph numbers in the presentence report, if applicable.)
(Use page 4 if necessary.)

1 ☐ **Chapter Two of the U.S.S.G. Manual** determinations by court (including changes to base offense level, or specific offense characteristics):

2 ☐ **Chapter Three of the U.S.S.G. Manual** determinations by court (including changes to victim-related adjustments, role in the offense, obstruction of justice, multiple counts, or acceptance of responsibility):

3 ☐ **Chapter Four of the U.S.S.G. Manual** determinations by court (including changes to criminal history category or scores, career offender, or criminal livelihood determinations):

4 ☐ **Additional Comments or Findings** (including comments or factual findings concerning certain information in the presentence report that the Federal Bureau of Prisons may rely on when it makes inmate classification, designation, or programming decisions):

C ☐ **The record establishes no need for a presentence investigation report pursuant to Fed.R.Crim.P. 32.**

II COURT FINDING ON MANDATORY MINIMUM SENTENCE (Check all that apply.)

A ☐ No count of conviction carries a mandatory minimum sentence.

B ☐ Mandatory minimum sentence imposed.

C ☐ One or more counts of conviction alleged in the indictment carry a mandatory minimum term of imprisonment, but the sentence imposed is below a mandatory minimum term because the court has determined that the mandatory minimum does not apply based on

☐ findings of fact in this case
☐ substantial assistance (18 U.S.C. § 3553(e))
☐ the statutory safety valve (18 U.S.C. § 3553(f))

III COURT DETERMINATION OF ADVISORY GUIDELINE RANGE (BEFORE DEPARTURES):

Total Offense Level: _____
Criminal History Category: _____
Imprisonment Range: _____ to _____ months
Supervised Release Range: _____ to _____ years
Fine Range: $ _____ to $ _____

☐ Fine waived or below the guideline range because of inability to pay.

Pages 7 - 10
are the
Statement of Reasons,
which will be docketed
separately as a sealed
document

UNITED STATES DISTRICT COURT

Central District of Utah

UNITED STATES OF AMERICA
V.
Victor Rios-Chavez

JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX206CR000019-002

USM Number: 13213-081

Carlos Garcia
Defendant's Attorney

THE DEFENDANT:

☑ pleaded guilty to count(s) 1 of the Indictment

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

☐ was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21 USC § 841(a)(1)	Possession With Intent to Distribute 500 Grams or More of Methamphetamine		1

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

9/6/2006
Date of Imposition of Judgment

Signature of Judge

Paul Cassell — US District Judge
Name of Judge — Title of Judge

9/4/06
Date

DEFENDANT: Victor Rios-Chavez
CASE NUMBER: DUTX206CR000019-002

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

188 months

☑ The court makes the following recommendations to the Bureau of Prisons:

Placement as close to Phoenix, Az. as possible to facilitate family visitation and for the BOP to take into consideration the defendant's medical conditions when making placement

☑ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____ .

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____ .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Victor Rios-Chavez
CASE NUMBER: DUTX206CR000019-002

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

60 months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

☑ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)

☑ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Victor Rios-Chavez
CASE NUMBER: DUTX206CR000019-002

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall not illegally reenter the United States. If the defendant returns to the United States during the period of supervision, he/she is instructed to contact the United States Probation Office in the District of Utah within 72 hours of arrival in the United States.

DEFENDANT: Victor Rios-Chavez
CASE NUMBER: DUTX206CR000019-002

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$ 100.00	$	$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage

TOTALS	$ 0.00	$ 0.00

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Victor Rios-Chavez
CASE NUMBER: DUTX206CR000019-002

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

A ☑ Lump sum payment of $ 100.00 due immediately, balance due

☐ not later than _____ , or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10
are the
Statement of Reasons,
which will be docketed
separately as a sealed
document

PS 42

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

UNITED STATES OF AMERICA	)	
Plaintiff,	)	
	)	**Docket No.: 2:06-CR-00068-001 PGC**
David Duce	)	
Defendant	)	

CONSENT TO MODIFY CONDITIONS OF RELEASE

I, David Duce, have discussed with Pretrial Services Officer Cordell Wilson, modification of my release conditions as follows:

> The defendant shall participate in mental health counseling as directed by U.S. Pretrial Services.

I consent to this modification of my release conditions and agree to abide by this modification.

Defendant — **Pretrial Services Officer**

8-31-06 — 8/30/06

Date — **Date**

I have reviewed the conditions with my client and concur that this modification is appropriate.

Defense Counsel — 9/01/06

Date

ORDER OF THE COURT

[ ] The above modification of conditions of release is ordered, to be effective on Sept. 11, 2006.

[ ] The above modification of conditions of release is **not** ordered.

Honorable Paul G. Cassell
United States District Judge

9/11/06

Date

UNITED STATES DISTRICT COURT

Central District of Utah

UNITED STATES OF AMERICA
V.
JESUS DAVID VARGAS

JUDGMENT IN A CRIMINAL CASE

Case Number: DUTx206cR000158-001

USM Number: 31636-112

Viviana Ramirez
Defendant's Attorney

THE DEFENDANT:

☑ pleaded guilty to count(s) 1 of the Indictment

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

☐ was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 USC § 922(g)(1)	Felon in Possession of Ammunition		1

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

9/6/2006
Date of Imposition of Judgment

Signature of Judge

Paul Cassell — US District Judge
Name of Judge — Title of Judge

9/11/06
Date

DEFENDANT: JESUS DAVID VARGAS
CASE NUMBER: DUTx206cR000158-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

27 months

☑ The court makes the following recommendations to the Bureau of Prisons:

Placement in the Lom Poc, Ca. facility to facilitate family visitation and a drug treatment program.

☑ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: JESUS DAVID VARGAS
CASE NUMBER: DUTx206cR000158-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

36 months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

☑ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)

☑ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: JESUS DAVID VARGAS
CASE NUMBER: DUTx206cR000158-001

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant will submit to drug/alcohol testing as directed by the probation office, and pay a one-time $115 fee to partially defray the costs of collection and testing. If testing reveals illegal drug use or excessive and/or illegal consumption of alcohol such as alcohol-related criminal or traffic offenses, the defendant shall participate in drug and/or alcohol abuse treatment under a copayment plan as directed by the probation office and shall not possess or consume alcohol during the course of treatment, nor frequent businesses where alcohol is the chief item of order.

2. The defendant shall submit his person, residence, office, or vehicle to a search, conducted by the probation office at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.

DEFENDANT: JESUS DAVID VARGAS
CASE NUMBER: DUTx206cR000158-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$ 100.00	$	$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage

TOTALS	$ 0.00	$ 0.00

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: JESUS DAVID VARGAS
CASE NUMBER: DUTx206cR000158-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

A ☑ Lump sum payment of $ 100.00 due immediately, balance due

☐ not later than _____ , or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10
are the
Statement of Reasons,
which will be docketed
separately as a sealed
document

MK

AO 245B (Rev. 06/05) Judgment in a Criminal Case
Sheet 1

UNITED STATES DISTRICT COURT

Central Division District of Utah

UNITED STATES OF AMERICA
V.
John Leonard Starkie

JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX206CR000189-001

USM Number: 13531-081

Ronald J. Yengich, Esq.
Defendant's Attorney

THE DEFENDANT:

☑ pleaded guilty to count(s) I, II & IV of Indictment

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

☐ was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 USC Sec 1344	Bank Fraud		I
18 USC Sec 1028A	Aggravated Identity Theft		II
18 USC Sec 659	Theft of Baggage From a Common Carrier		IV

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☑ Count(s) remaining ☐ is ☑ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

8/28/2006
Date of Imposition of Judgment

J. Thomas Greene
Signature of Judge

J. Thomas Greene — U.S. District Judge
Name of Judge — Title of Judge

September 5, 2006
Date

DEFENDANT: John Leonard Starkie
CASE NUMBER: DUTX206CR000189-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

24 months for Count II. The defendant is sentenced to time served on Counts I and IV. The sentence imposed on Count II is ordered to run consecutive to the sentence imposed for Counts I and IV, for a total sentence of 24 months.

☑ The court makes the following recommendations to the Bureau of Prisons:

The court recommends defendant participate in the Intensive Alcohol and Drug Treatment Program known as RDAP while incarcerated.

☑ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: John Leonard Starkie
CASE NUMBER: DUTX206CR000189-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

60 months.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

☑ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)

☑ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: John Leonard Starkie
CASE NUMBER: DUTX206CR000189-001

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall maintain full-time, verifiable employoment or participate in academic or vocational development throughout the term of supervision as deemed appropriate by the probation office.

2. The defendant shall refrain from incurring new credit charges or opening additional lines of credit, unless he is in compliance with any established payment schedule and obtains the approval of the probation office.

3. The defendant shall provide the probation office access to all requested financial information.

4. The defendant will submit to drug/alcohol testing as directed by the probation office, and pay a one-time $115 fee to partially defer the costs of collection and testing.

5. The defendant shall participate in drug and/or alcohol abuse treatment under a co-payment plan as directed by the USPO, and shall not possess or consume alcohol during the course of treatment.

DEFENDANT: John Leonard Starkie
CASE NUMBER: DUTX206CR000189-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$ 300.00	$	$

☑ The determination of restitution is deferred until 9/28/2006 An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage

TOTALS	$ 0.00	$ 0.00

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: John Leonard Starkie
CASE NUMBER: DUTX206CR000189-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

A ☑ Lump sum payment of $ 300.00 due immediately, balance due

☐ not later than _____, or
☑ in accordance ☐ C, ☐ D, ☐ E, or ☑ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☑ Special instructions regarding the payment of criminal monetary penalties:

Special Assessment Fee of $300 is due immediately. (Restitution amount to be determined within 30 days.)

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10
are the
Statement of Reasons,
which will be docketed
separately as a sealed
document

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA, **Plaintiff,** **v.** **RADOMIR ZORANOVIC,** **Defendant.**	**ORDER GRANTING MOTION TO WITHDRAW AS COUNSEL** **Case No. 2:06 CR 349 TC**

This matter has been reviewed by the Court on a Motion to Withdraw as Counsel filed by Kristen R. Angelos, Assistant Federal Defender; the Court being fully advised and good cause appearing, IT IS HEREBY ORDERED:

Kristen R. Angelos, Assistant Federal Defender, is hereby granted leave to withdraw as counsel of record for Defendant.

Dated this 11 day of September, 2006.

BY THE COURT:

Tena Campbell

TENA CAMPBELL
United States District Court Judge

UNITED STATES DISTRICT COURT

Central District of Utah

UNITED STATES OF AMERICA
V.
VICTOR GONZALEZ-YERBA

JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX206CR000415-001

USM Number: 13699-081

Carlos Garcia
Defendant's Attorney

THE DEFENDANT:

☑ pleaded guilty to count(s) 1 of the Indictment

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

☐ was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
8 USC § 1326	Re-Entry of Previously Removed Alien		1

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

9/6/2006
Date of Imposition of Judgment

Signature of Judge

Paul Cassell — US District Judge
Name of Judge — Title of Judge

9/11/06
Date

DEFENDANT: VICTOR GONZALEZ-YERBA
CASE NUMBER: DUTX206CR000415-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

10 months

☑ The court makes the following recommendations to the Bureau of Prisons:

Placement in a facility as close to Utah as possible to facilitate family visitation.

☑ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____ .

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____ .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: VICTOR GONZALEZ-YERBA
CASE NUMBER: DUTX206CR000415-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

24 months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

☑ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)

☑ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: VICTOR GONZALEZ-YERBA
CASE NUMBER: DUTX206CR000415-001

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall not illegally reenter the United States. If the defendant returns to the United States during the period of supervision, he is instructed to contact the United States Probation Office in the District of Utah within 72 hours of arrival in the United States.

DEFENDANT: VICTOR GONZALEZ-YERBA
CASE NUMBER: DUTX206CR000415-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$ 100.00	$	$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage

TOTALS	$ 0.00	$ 0.00

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: VICTOR GONZALEZ-YERBA
CASE NUMBER: DUTX206CR000415-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

A ☑ Lump sum payment of $ 100.00 due immediately, balance due

☐ not later than _____ , or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ *Payment during the term of supervised release will commence within* _____ *(e.g., 30 or 60 days) after release from* imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10
are the
Statement of Reasons,
which will be docketed
separately as a sealed
document

TODD UTZINGER (6047)
Attorney for Defendant
144 North 100 West
Bountiful, Utah 84010
Telephone: (801) 397-3131
Facsimile: (801) 397-3139

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

UNITED STATES OF AMERICA, Plaintiff, v. ALEJANDRO SILVA, Defendant.	)	ORDER STRIKING TRIAL DATE AND EXCLUDING TIME FROM SPEEDY TRIAL ACT CALCULATION Case No. 2:06-CR-00490 TC Judge Tena Campbell

This matter is before the Court on defendant's motion to continue the trial now set for September 18, 2006, and to have the time between September 18, 2006, and any new trial date excluded from the speedy trial act calculation.

For good cause shown, I find and order the following:

1. Additional time is necessary to allow counsel adequate time to pursue possible plea negotiations and to prepare for trial.

2. I find that a continuance is necessary to allow defense counsel adequate to investigate defendant's case, to prepare for trial, and to pursue plea negotiations.

3. I find that the continuance serves the ends of justice and that the benefits gained by the continuance outweigh the interests of the public and defendant in a speedy trial.

4. Pursuant to Title 18 sec. 3161 (h)(8)(a) and upon defendant's motion, I order that the time between September 18, 2006 and the new trial date of 11/14/2006 @ 2:30 be excluded from the computation of time required under the Speedy Trial Act for the reasons state above.

SIGNED AND DATED this 6 day of Sept, 2006.

Tena Campbell

THE HONORABLE TENA CAMPBELL
Federal District Court Judge, District of Utah

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

ANDREW BARTON Plaintiff, vs. DESERET LABORATORIES INTERNATIONAL, LLC, and DESERET LABORATORIES, INC., Defendants.	ORDER ON MOTION TO ALTER OR AMEND JUDGMENT OF DISMISSAL Case No. 2:06-CV-00197 PGC

Plaintiff Andrew Barton brought this action against defendants Deseret Laboratories International, LLC ("DLI"), and Deseret Laboratories, Inc., asserting violation of his rights under the Family and Medical Leave Act of 1993[1] and equitable estoppel as grounds for relief. On July 11, 2006, this court issued an order dismissing DLI from the case.[2] The court granted this order to dismiss because DLI did not exist during the period in which the plaintiff worked for Deseret Laboratories and could not, therefore, have been the plaintiff's employer. In its Motion to Alter or Amend the Judgment of Dismissal, the plaintiff requests the court to alter its dismissal to

[1]29 U.S.C. § 2601, *et seq*.

[2]*See* Docket No.16.

reflect that DLI was dismissed without prejudice. The court declines to do so; DLI was dismissed from this lawsuit with prejudice.

DISCUSSION

The plaintiff claims DLI's dismissal should be without prejudice because there may be facts, in light of the theory of successor liability, under which DLI could be held liable for the acts of the plaintiff's employer, Deseret Laboratories. The plaintiff's claim is barred at the outset, as it was not timely filed. Rule 59(e) requires parties to file any motion to amend a judgment "no later than 10 days after entry of the judgment."[3] In this case, the court entered its order on July 11, 2006. The plaintiff did not move the court to amend its order until July 28, 2006. However, even if the plaintiff's motion were not barred as untimely, it fails on substantive grounds.

According to the Tenth Circuit, under Rule 12(b) of the Federal Rules of Civil Procedure, a dismissal with prejudice is appropriate where giving the plaintiff an opportunity to amend a complaint would be futile.[4] Here, however, the court viewed the plaintiff's Motion to Dismiss as a motion for summary judgment, pursuant to Rule 12(b), as the court considered materials outside of the pleadings. This court's dismissal, therefore, operated as a review on the merits. In its prior order, the court intended to dismiss DLI with prejudice; summary judgment evinces finality. Further, even using the Tenth Circuit's approach to dismissals pursuant to Rule 12(b), it is obvious the plaintiff could not prevail against DLI under a successor liability theory based on

[3]Fed. R. Civ. P. 59(e).

[4]*Curley v. Perry*, 246 F.3d 1278, 1282 (10th Cir. 2001).

the few facts the plaintiff alleged in support of this theory.

The Tenth Circuit evaluates successor liability using the "*MacMillan* factors."[5] The factors are: "(1) whether the successor company had notice of the charge, (2) the ability of the predecessor to provide relief, (3) whether there has been a substantial continuity of business operations, (4) whether the new employer uses the same plant, (5) whether he uses the same or substantially the same work force, (6) whether he uses the same or substantially the same supervisory personnel, (7) whether the same jobs exist under substantially the same working conditions, (8) whether he uses the same machinery, equipment and methods of production and 9) whether he produces the same product."[6] Factors four through nine appear to augment factor three, informing the court as to whether there has been substantial continuity of business operations.

The Tenth Circuit adopted and applied these factors in *Trujillo v. Longhorn Manufacturing Co.* In *Trujillo*, the previous company sold nearly all of its assets, including its name, to a new company.[7] The assets of the previous company largely capitalized the new company.[8] Also, the new company continued to operate the factory where the plaintiff employee worked, using the same facilities, supervisory personnel, and production methods.[9] The court

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[5]*Trujillo v. Longhorn Mfg. Co.*, 694 F.2d 221, 225 (10th Cir. 1982).

[6]*Id.* at 225 n.3 (citing *EEOC v. MacMillan Bloedel Containers, Inc.*, 503 F.2d 1086, 1094 (6th Cir. 1974)).

[7]*Id.* at 222.

[8]*Id.* at 222–23.

[9]*Id.* at 223.

also considered whether applying the theory of successor liability would work an unfair hardship on the successor corporation. Because the new company had notice of the EEOC complaint prior to purchasing the previous company and, thus, could have contracted around liability, the court found no unfair hardship.[10] In light of its factual findings, the court held the new company liable under a theory of successor liability.

In this case, the plaintiff alleges only that DLI had notice of the FMLA claim because of its involvement in the Department of Labor investigation, and that DLI functions as a holding company for Deseret Laboratories. The plaintiff does not allege facts showing DLI may meet any of the factors required to establish the businesses have sufficient continuity to prove successor liability. Rather than alleging facts by which the court could conclude the plaintiff may succeed on a successor liability claim against DLI, the plaintiff does nothing more than string together a series of "ifs":

> *If*, however, DLI had notice of Plaintiff's claim, and *if* Deseret Laboratories is unable to provide relief to Barton, and *if* there is sufficient continuity in the business operations of Deseret Laboratories and DLI, then the theory of successor liability *may* apply to create liability against DLI.[11]

The plaintiff had multiple opportunities to allege facts suggesting he could prevail on a successor liability theory: his response to the defendant's motion to dismiss, his motion to alter the court's judgment, and his reply to the defendant's opposition to this motion. Given the plaintiff's many opportunities to allege such facts and his failure to do so, the court denies the plaintiff's motion

---

[10]*Id.* at 225.

[11]Plaintiff's Memo. in Support of Motion to Alter or Amend the Judgment of Dismissal, Docket No. 20, at 4 (July 28, 2006) (emphasis added).

to amend the court's prior judgment. It is obvious to the court the plaintiff could not prevail on the few facts alleged in support of DLI's liability as a successor, and allowing him to amend his complaint would be futile.

CONCLUSION

The court DENIES the plaintiff's motion to amend the court's judgment to reflect the dismissal was without prejudice [#19]. Instead, the court clarifies, consistent with its prior intent, that it dismissed DLI with prejudice in its Order Granting Motion to Dismiss.

DATED this 11th day of September, 2006.

BY THE COURT:

Paul G. Cassell
United States District Judge

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

CENTURY 21 REAL ESTATE, LLC, Plaintiff, v. CASTLELAND REALTY, INC., CAROL A. EAQUINTO, RALPH KEELE and RYAN KEELE, Defendants.	SCHEDULING ORDER AND ORDER VACATING HEARING Case No. 2:06CV0381 Judge Paul G. Cassell

Pursuant to Fed.R. Civ P. 16(b), the Magistrate Judge[1] received the Attorneys' Planning Report filed by counsel. The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

IT IS ORDERED that the Initial Pretrial Hearing set for *September 13, 2006*, at *2:30* is VACATED.

1.	PRELIMINARY MATTERS	DATE
	Nature of claims and any affirmative defenses:	
a.	Was Rule 26(f)(1) Conference held?	*08/14/06*
b.	Has Attorney Planning Meeting Form been submitted?	*08/14/06*
c.	Was 26(a)(1) initial disclosure completed?	*08/30/06*

2.	DISCOVERY LIMITATIONS	NUMBER
a.	Maximum Number of Depositions by Plaintiff(s)	*10*
b.	Maximum Number of Depositions by Defendant(s)	*10*
c.	Maximum Number of Hours for Each Deposition (unless extended by agreement of parties)	*7*
d.	Maximum Interrogatories by any Party to any Party	*25*
e.	Maximum requests for admissions by any Party to any Party	*25*

	f.	Maximum requests for production by any Party to any Party	*Unlimited*

3.		AMENDMENT OF PLEADINGS/ADDING PARTIES[2]	DATE
	a.	Last Day to File Motion to Amend Pleadings	*11/02/06*
	b.	Last Day to File Motion to Add Parties	*11/02/06*

4.		RULE 26(a)(2) REPORTS FROM EXPERTS[3]	DATE
	a.	Plaintiff	*02/15/07*
	b.	Defendant	*03/15/07*
	c.	Counter reports	*04/16/07*

5.		OTHER DEADLINES	DATE
	a.	Discovery to be completed by:	
		Fact discovery	*04/02/07*
		Expert discovery	*05/15/07*
	b.	*(optional)* Final date for supplementation of disclosures and discovery under Rule 26 (e)	
	c.	Deadline for filing dispositive or potentially dispositive motions	*06/01/07*

6.		SETTLEMENT/ALTERNATIVE DISPUTE RESOLUTION		DATE
	a.	Referral to Court-Annexed Mediation:	*No*	
	b.	Referral to Court-Annexed Arbitration	*No*	
	c.	Evaluate case for Settlement/ADR on		*04/02/2007*
	d.	Settlement probability:	Fair	

7.	TRIAL AND PREPARATION FOR TRIAL		TIME	DATE
a.	Rule 26(a)(3) Pretrial Disclosures[4]			
	Plaintiff			*10/3/07*
	Defendant			*10/17/07*
b.	Objections to Rule 26(a)(3) Disclosures (if different than 14 days provided in Rule)			
c.	Special Attorney Conference[5] on or before			*10/31/07*
d.	Settlement Conference[6] on or before			*10/31/07*
e.	Final Pretrial Conference		3:00 p.m.	*11/14/07*
f.	Trial	Length		
	i. Bench Trial	*3 days*	8:00 a.m.	*11/28/07*
	ii. Jury Trial	*# days*	___:__ _.m.	*00/00/00*

8. OTHER MATTERS

Counsel should contact chambers staff of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.

Dated this 11th day of September 2006.

BY THE COURT:

Brooke C. Wells

Brooke C. Wells
U.S. Magistrate Judge

[1] The Magistrate Judge completed Initial Pretrial Scheduling under DUCivR 16-1(b) and DUCivR 72-2(a)(5). The name of the Magistrate Judge who completed this order should NOT appear on the caption of future pleadings,

unless the case is separately referred to that Magistrate Judge. A separate order may refer this case to a Magistrate Judge under DUCivR 72-2 (b) and 28 USC 636 (b)(1)(A) or DUCivR 72-2 (c) and 28 USC 636 (b)(1)(B). The name of any Magistrate Judge to whom the matter is referred under DUCivR 72-2 (b) or (c) should appear on the caption as required under DUCivR10-1(a).

[2] Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).

[3] Error! Main Document Only.A party shall disclose the identity of each testifying expert and the subject of each such expert's testimony at least 60 days before the deadline for expert reports from that party. This disclosure shall be made even if the testifying expert is an employee from whom a report is not required.

[4] Any demonstrative exhibits or animations must be disclosed and exchanged with the 26(a)(3) disclosures.

[5] The Special Attorneys Conference does not involve the Court. Counsel will agree on voir dire questions, jury instructions, a pre-trial order and discuss the presentation of the case. Witnesses will be scheduled to avoid gaps and disruptions. Exhibits will be marked in a way that does not result in duplication of documents. Any special equipment or courtroom arrangement requirements will be included in the pre-trial order.

[6] The Settlement Conference does not involve the Court unless a separate order is entered. Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

Northern Division for the District of Utah

MOUNTAIN AMERICA FEDERAL CREDIT UNION, **Plaintiff**, **vs.** FRANK GODFREY, and WELLS FARGO INVESTMENTS, LLC, **Defendant**.	**SCHEDULING ORDER AND ORDER VACATING HEARING** **Case No.** 2:06 cv 481 **District Judge Ted Stewart** **Magistrate Judge Paul Warner**

Pursuant to Fed. R. Civ. P. 16(b), the Magistrate Judge[1] received the Attorneys' Planning Report filed by counsel. The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

IT IS ORDERED that the Initial Pretrial Hearing set for *September 13, 2006*, **at** *1:30 pm* **is VACATED.**

ALL TIMES 4:30 PM UNLESS INDICATED

1.	**PRELIMINARY MATTERS**	**DATE**
	Nature of claim(s) and any affirmative defenses:	
	a. Was Rule 26(f)(1) Conference held?	*6/19/06*
	b. Has Attorney Planning Meeting Form been submitted?	*yes*
	c. Was 26(a)(1) initial disclosure completed?	*8/18/06*

2.	**DISCOVERY LIMITATIONS**	**NUMBER**
	a. Maximum Number of Depositions by Plaintiff(s)	*10*
	b. Maximum Number of Depositions by Defendant(s)	*10*
	c. Maximum Number of Hours for Each Deposition (unless extended by agreement of parties)	*5*
	d. Maximum Interrogatories by any Party to any Party	*40*

e. **Maximum requests for admissions by any Party to any Party** *30*

f. **Maximum requests for production by any Party to any Party** *30*

DATE

3. **AMENDMENT OF PLEADINGS/ADDING PARTIES**[2]

a. **Last Day to File Motion to Amend Pleadings** *9/29/06*

b. **Last Day to File Motion to Add Parties** *9/29/06*

4. **RULE 26(a)(2) REPORTS FROM EXPERTS**[3]

a. **Plaintiff** *12/15/06*

b. **Defendant** *1/19/07*

c. **Counter Reports** *2/16/07*

5. **OTHER DEADLINES**

a. **Discovery to be completed by:**

Fact discovery *11/03/06*

Expert discovery *3/30/07*

b. ***(optional)*** **Final date for supplementation of disclosures and discovery under Rule 26 (e)**

c. **Deadline for filing dispositive or potentially dispositive motions** *4/13/07*

6. **SETTLEMENT/ ALTERNATIVE DISPUTE RESOLUTION**

a. **Referral to Court-Annexed Mediation** *No*

b. **Referral to Court-Annexed Arbitration** *No*

c. **Evaluate case for Settlement/ADR on** *4/13/07*

d. **Settlement probability:**

7. **TRIAL AND PREPARATION FOR TRIAL:**

a. **Rule 26(a)(3) Pretrial Disclosures**[4]

Plaintiffs **7/19/07**

Defendants **8/2/07**

b. Objections to Rule 26(a)(3) Disclosures
(if different than 14 days provided in Rule)

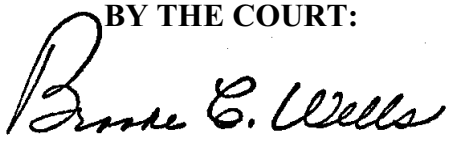
				DATE
c.	**Special Attorney Conference[5] on or before**			**8/16/07**
d.	**Settlement Conference[6] on or before**			**8/16/07**
e.	**Final Pretrial Conference**		**2:30 pm**	**8/30/07**
f.	**Trial**	**Length**	**Time**	**Date**
	i. Bench Trial	***5 days***	***8:30 am***	***9/17/07***
	ii. Jury Trial			

8. OTHER MATTERS:

Counsel should contact chambers staff of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.

Dated this 11 day of September, 2006.

BY THE COURT:



Brooke C. Wells
U.S. Magistrate Judge

1. The Magistrate Judge completed Initial Pretrial Scheduling under DUCivR 16-1(b) and DUCivR 72-2(a)(5). The name of the Magistrate Judge who completed this order should NOT appear on the caption of future pleadings, unless the case is separately referred to that Magistrate Judge. A separate order may refer this case to a Magistrate Judge under DUCivR 72-2 (b) and 28 USC 636 (b)(1)(A) or DUCivR 72-2 (c) and 28 USC 636 (b)(1)(B). The name of any Magistrate Judge to whom the matter is referred under DUCivR 72-2 (b) or (c) should appear on the caption as required under DUCivR10-1(a).

2. Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).

3. A party shall disclose the identity of each testifying expert and the subject of each such expert's testimony at least 60 days before the deadline for expert reports from that party. This disclosure shall be made even if the testifying expert is an employee from whom a report is not required.

4. Any demonstrative exhibits or animations must be disclosed and exchanged with the 26(a)(3) disclosures.

5. The Special Attorneys Conference does not involve the Court. Counsel will agree on voir dire questions, jury instructions, a pre-trial order and discuss the presentation of the case. Witnesses will be scheduled to avoid gaps and disruptions. Exhibits will be marked in a way that does not result in duplication of documents. Any special equipment or courtroom arrangement requirements will be included in the pre-trial order.

6. Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

OGDEN CITY, et al	:	NOTICE OF RECUSAL
Plaintiff,	:	
vs.	:	
UNION SQUARE ASSOCIATES,	:	Case No. 2:06CV 564 TS
Defendant.	:	

I recuse myself in this case, and ask that it be appropriately referred to another Magistrate Judge.

DATED this 11th day of September, 2006,

BY THE COURT:

Brooke C. Wells

BROOKE C. WELLS
United States Magistrate Judge

David K. Isom, (Utah Bar # 4773)
GREENBERG TRAURIG, LLP
The Tabor Center
1200 Seventeenth Street
24th Floor
Denver, Colorado 80202
Telephone: (303) 572-6500
Facsimile: (303) 572-6540

Attorney for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

STORES ON LINE, INC., a Delaware corporation, Plaintiffs, v. INTERNET ADVANCEMENT, INC., a Washington corporation, Defendant.	**ORDER FOR PRO HAC VICE ADMISSION** No. 2:06-CV-00688 Judge Dee Benson

It appearing to the Court that Petitioner meets the pro hac vice admission requirements of DUCiv R 83-1.1(d), the motion for the admission pro hac vice of Gayle L. Strong in the United States District Court, District of Utah in the subject case is GRANTED.

Dated: this 11th day of September, 2006.

Dee Benson

U.S. District Judge Dee Benson

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

JOHN A. CAMBELL, Plaintiff, vs. TOWNSHIP OF LAKEWOOD N.J., OFFICER BOWDEN, et al., Defendants.	ORDER DENYING PLAINTIFF'S MOTIONS FOR APPOINTMENT OF COUNSEL AND SERVICE OF PROCESS AND DISMISSING CASE Case No. 2:06-CV-739 TS

Plaintiff, John A. Campbell, has filed with the Clerk of the Court a *pro se* civil rights complaint[1] under 42 U.S.C. §§ 1983 and 1985. Plaintiff's application to proceed *in forma pauperis* has been granted.[2] Plaintiff now seeks official service of process[3] and appointment of counsel.[4]

[1]Docket No. 3.

[2]Docket No. 2.

[3]Docket No. 5.

[4]Docket No. 4.

Because Campbell was granted permission to proceed *in forum pauperis*, the provisions of the *in forma pauperis* statute, 28 U.S.C. § 1915, are applicable. Under § 1915 the Court shall, at any time, *sua sponte* dismiss the case if the Court determines that the Complaint is frivolous or fails to state a claim upon which relief may be granted.[5] The Court has carefully reviewed the Plaintiff's filings, and has made every effort to try to determine a claim or cause of action from the file, but has been unable to do so. Although Plaintiff makes requests for relief, he offers no facts and no legal claim which relate to a civil rights action.

It is therefore

ORDERED that Plaintiff's Motion for Appointment of Counsel (Docket No. 4), and Plaintiff's Motion for Service of Process (Docket No. 5) are DENIED. It is further

ORDERED that, pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii), Plaintiff's case is DISMISSED. The Clerk of the Court is directed to close this case forthwith.

DATED September 11, 2006.

BY THE COURT:

TED STEWART
United States District Judge

[5]28 U.S.C. § 1915(e)(2).

UNITED STATES DISTRICT COURT

Central Division **District of** UTAH

John A. Campbell

Plaintiff

V.

S.S. Administration, Egg Harbor, NJ

Defendant

ORDER ON APPLICATION TO PROCEED WITHOUT PREPAYMENT OF FEES

CASE NUMBER: 2:06cv764 TS

Having considered the application to proceed without prepayment of fees under 28 USC §1915;

IT IS ORDERED that the application is:

☒ GRANTED.

☒ The clerk is directed to file the complaint.

☐ IT IS FURTHER ORDERED that the clerk issue summons and the United States marshal serve a copy of the complaint, summons and this order upon the defendant(s) as directed by the plaintiff. All costs of service shall be advanced by the United States.

☐ DENIED, for the following reasons:

ENTER this 11th day of September, 2006.

s/David Nuffer
Signature of Judge

Magistrate Judge David Nuffer
Name and Title of Judge

UNITED STATES DISTRICT COURT

Central Division **District of** UTAH

John A. Campbell

Plaintiff

V.

City of Reno, NV et al

Defendant

ORDER ON APPLICATION TO PROCEED WITHOUT PREPAYMENT OF FEES

CASE NUMBER: 2:06cv765 DAK

Having considered the application to proceed without prepayment of fees under 28 USC §1915;

IT IS ORDERED that the application is:

☒ GRANTED.

☒ The clerk is directed to file the complaint.

☐ IT IS FURTHER ORDERED that the clerk issue summons and the United States marshal serve a copy of the complaint, summons and this order upon the defendant(s) as directed by the plaintiff. All costs of service shall be advanced by the United States.

☐ DENIED, for the following reasons:

ENTER this 11th day of September, 2006.

s/David Nuffer
Signature of Judge

Magistrate Judge David Nuffer
Name and Title of Judge

AO 240A (Rev. 12/03)

UNITED STATES DISTRICT COURT

Central Division **District of** UTAH

John A. Campbell

Plaintiff

V.

Municipality of Hackensak, N.J. et al

Defendant

ORDER ON APPLICATION TO PROCEED WITHOUT PREPAYMENT OF FEES

Judge Tena Campbell
DECK TYPE: Civil
DATE STAMP: 09/12/2006 @ 08:19:09
CASE NUMBER: 2:06CV00770 TC

Having considered the application to proceed without prepayment of fees under 28 USC §1915;

IT IS ORDERED that the application is:

☑ GRANTED.

☑ The clerk is directed to file the complaint.

☐ IT IS FURTHER ORDERED that the clerk issue summons and the United States marshal serve a copy of the complaint, summons and this order upon the defendant(s) as directed by the plaintiff. All costs of service shall be advanced by the United States.

☐ DENIED, for the following reasons:

ENTER this 11 day of September, 2006

Brooke C. Wells
Signature of Judge

Magistrate Judge Brooke C. Wells
Name and Title of Judge

AO 240A (Rev. 12/03)

UNITED STATES DISTRICT COURT

Central **District of** UTAH

John A. Campbell

Plaintiff

V.

Atlantic City Police

Defendant

ORDER ON APPLICATION TO PROCEED WITHOUT PREPAYMENT OF FEES

Judge Ted Stewart
DECK TYPE: Civil
DATE STAMP: 09/12/2006 @ 08:19:57
CASE NUMBER: 2:06CV00771 TS

Having considered the application to proceed without prepayment of fees under 28 USC §1915;

IT IS ORDERED that the application is:

☑ GRANTED.

☑ The clerk is directed to file the complaint.

☐ IT IS FURTHER ORDERED that the clerk issue summons and the United States marshal serve a copy of the complaint, summons and this order upon the defendant(s) as directed by the plaintiff. All costs of service shall be advanced by the United States.

☐ DENIED, for the following reasons:

ENTER this 11 day of September, 2006.

Brooke C. Wells
Signature of Judge

Magistrate Judge Brooke C. Wells
Name and Title of Judge

AO 240A (Rev. 12/03)

UNITED STATES DISTRICT COURT

Central Division **District of** UTAH

John A. Campbell

Plaintiff

V.

Brick, NJ

Defendant

ORDER ON APPLICATION TO PROCEED WITHOUT PREPAYMENT OF FEES

Judge J. Thomas Greene
DECK TYPE: Civil
DATE STAMP: 09/12/2006 @ 08:20:39
CASE NUMBER: 2:06CV00772 JTG

Having considered the application to proceed without prepayment of fees under 28 USC §1915;

IT IS ORDERED that the application is:

☑ GRANTED.

☑ The clerk is directed to file the complaint.

☐ IT IS FURTHER ORDERED that the clerk issue summons and the United States marshal serve a copy of the complaint, summons and this order upon the defendant(s) as directed by the plaintiff. All costs of service shall be advanced by the United States.

☐ DENIED, for the following reasons:

ENTER this 11 day of Sept., 2006.

Brooke C. Wells
Signature of Judge

Magistrate Judge Brooke C. Wells
Name and Title of Judge

2

AO 240A (Rev. 12/03)

UNITED STATES DISTRICT COURT

Central District of UTAH

Martin Ortega

Plaintiff

V.

Jo Anne Barnhart

Defendant

ORDER ON APPLICATION TO PROCEED WITHOUT PREPAYMENT OF FEES

Judge Dale A. Kimball
DECK TYPE: Civil
DATE STAMP: 09/12/2006 @ 12:56:17
CASE NUMBER: 2:06CV00773 DAK

Having considered the application to proceed without prepayment of fees under 28 USC §1915;

IT IS ORDERED that the application is:

☒ GRANTED.

☒ The clerk is directed to file the complaint.

☐ IT IS FURTHER ORDERED that the clerk issue summons and the United States marshal serve a copy of the complaint, summons and this order upon the defendant(s) as directed by the plaintiff. All costs of service shall be advanced by the United States.

☐ DENIED, for the following reasons:

ENTER this 12th day of September, 2006.

s/David Nuffer
Signature of Judge

Magistrate Judge David Nuffer
Name and Title of Judge

JOHN P. ASHTON (#0134)
VanCott Bagley Cornwall & McCarthy
50 South Main Street, Suite 1600
Salt Lake City, UT 84144-0450
Tel.: (801) 532-3333
Fax.: (801) 534-0058
Email: jashton@vancott.com

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

THE STATE OF UTAH *ex rel.* JAN GRAHAM, in her capacity as ATTORNEY GENERAL OF THE STATE OF UTAH, Plaintiff, v. R.J. REYNOLDS TOBACCO CO., *et al.*, Defendants.	SUBSEQUENT PARTICIPATING MANUFACTURER COMPANIA INDUSTRIAL DE TABACOS MONTE PAZ, S.A.'S JOINDER IN THE PENDING MOTION TO COMPEL ARBITRATION Civil No. 2:96CV0829B Honorable Dee V. Benson

Defendant Subsequent Participating Manufacturer Compania Industrial de Tabacos Monte Paz, S.A., by and through its undersigned counsel of record, hereby joins in the Original Participating Manufacturers' Motion to Compel Arbitration and to Dismiss or, in the Alternative, Stay, this Litigation.

Compania Industrial de Tabacos Monte Paz, S.A. joins the foregoing motion on the same basis and for the same reasons that the other SPMs described in their Joinder in the Original

Participating Manufacturers' Motion to Compel Arbitration and to Dismiss, or in the Alternative, Stay This Litigation, incorporated by this reference.

DATED this 11th day of September, 2006.

Respectfully submitted,

/s/ John P. Ashton
JOHN P. ASHTON (#0134)
VanCott Bagley Cornwall & McCarthy
50 South Main Street, Suite 1600
Salt Lake City, UT 84144-0450
Tel.: (801) 532-3333
Fax.: (801) 534-0058
Email.:jashton@vancott.com

Attorneys for Joining Subsequent Participating Manufacturers Commonwealth Brands, Inc.; Compania Industrial de Tabacos Monte Paz, SA; Daughters & Ryan, Inc.; Farmers Tobacco Company of Cynthiana, Inc.; House of Prince A/S; Japan Tobacco International U.S.A., Inc.; King Maker Marketing, Inc.; Kretek International, Inc.; Liberty Brands, LLC; Liggett Group LLC; Peter Stokkebye Tobaksfabrik A/S; P.T. Djarum; Santa Fe Natural Tobacco Company, Inc.; Sherman's 1400 Broadway N.Y.C., Inc.; Top Tobacco, L.P.; Vibo Corporation d/b/a General Tobacco; Virginia Carolina Corporation, Inc.; Von Eicken Group

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of September, 2006, I served true and correct copies of the foregoing SUBSEQUENT PARTICIPATING MANUFACTURER COMPANIA INDUSTRIAL DE TABACOS MONTE PAZ, S.A.'S JOINDER IN THE PENDING MOTION TO COMPEL ARBITRATION upon the following counsel, in the manner indicated below:

E-FILING:

Mark Shurtleff Raymond H. Hintze Mark E. Burns Katharine H. Kinsman Attorney General's Office 160 E 300 S, 5th Floor PO Box 140857 Salt Lake City, UT 84114-0857 Attorneys for Plaintiff	MANNING, CURTIS BRADSHAW & BEDNAR LLC Brent V. Manning Alan C. Bradshaw Tyson B. Snow Third Floor Newhouse Building 10 Exchange Place Salt Lake City, UT 84111 Attorneys for R.J. Reynolds Tobacco Company and Lorillard Tobacco Company
Reed M. Stringham, III Attorney General's Office 160 East 300 South, 6th Floor PO Box 140856 Salt Lake City, UT 84114-0856 Attorneys for Plaintiff	BERMAN & SAVAGE Casey K. McGarvey 170 S Main, Ste. 500 Salt Lake City, UT 84101 Attorneys for Lorillard Tobacco Company and Loews Corporation
CLYDE SNOW SESSIONS & SWENSON Rodney G. Snow Gary L. Paxton 201 S Main Street, #1300 Salt Lake City, UT 84111 Attorneys for PricewaterhouseCoopers LLP	FABIAN & CLENDENIN Peter W. Billings, Jr. Douglas J. Payne 215 S State Street, Ste. 1200 PO Box 510210 Salt Lake City, UT 84151 Attorneys for The Council for Tobacco Research – U.S.A., Inc., Lorillard Tobacco Company, Loews Corporation and R.J. Reynolds Tobacco Co.

SNELL & WILMER LLP Alan L. Sullivan Todd M. Shaughnessy 15 W South Temple, #1200 Salt Lake City, UT 84101 Attorney for Philip Morris USA	JONES WALDO HOLBROOK & MCDONOUGH James S. Lowrie Anthony L. Rampton 170 S Main Street, Ste. 1500 Salt Lake City, UT 84101 Attorneys for Tobacco Institute and Council for Tobacco Research
SNOW CHRISTENSEN & MARTINEAU R. Brent Stephens 10 Exchange Place, #1100 PO Box 45000 Salt Lake City, UT 84145-5000 Attorneys for BAT Industries, British American Tobacco and British-American Tobacco Holding	BALLARD SPAHR ANDREWS & INGERSOLL James W. Stewart 201 S Main Street, Ste. 600 Salt Lake City, UT 84111 Attorneys for Tobacco Institute
STOEL RIVES John A. Anderson 201 S Main Street, Ste. 1100 Salt Lake City, UT 84111-4904 Attorney for Philip Morris USA	PARRY ANDERSON & GARDINER Douglas J. Parry 60 E South Temple, #1200 Salt Lake City, UT 84111 Attorneys for Hill & Knowlton
CHAPMAN & CUTLER Bret F. Randall James K. Tracy One Utah Center 201 S Main Street, Ste. 2000 Salt Lake City, UT 81111 Attorneys for Hill & Knowlton	HATCH JAMES & DODGE Brent O. Hatch Mark R. Clements Mark F. James 10 West Broadway, Ste. 400 Salt Lake City, UT 84101 Attorney for Linda K. Villagrana and all other similarly situated, and for Renee A. Masich and all other similarly situated
David M. McGrath ZIONS FIRST NATIONAL BANK 10 E. South Temple, 5th Floor PO Box 30709 Salt Lake City, UT 84130-0709 Attorneys for Hill & Knowlton	WOOD CRAPO LLC Cathleen C. Gilbert 60 E South Temple, #500 Salt Lake City, UT 84111 Attorneys for Hill & Knowlton

U.S. MAIL

DAVIS POLK & WARDWELL D. Scott Wise 450 Lexington Avenue New York, NY 10017-9998 Attorneys for RJR Nabisco Inc.	Nanci Snow Bockelie 261 E 300 S, Ste. 300 Salt Lake City, UT 84111 Attorneys for Plaintiff
WEIL, GOTSHAL & MANGES, LLP Penny P. Reid 767 Fifth Avenue New York, NY 10153 Attorneys for Lorillard Tobacco Co.	Jeffery Scott Williams NELSON CHRISTENSEN & HELSTEN 68 S Main Street, 6th Floor Salt Lake City, UT 84101 Attorneys for Plaintiff
KIRKLAND & ELLIS Todd A. Gale 200 E Randolph Drive Chicago, IL 60601 Attorneys for Brown & Williamson Tobacco Corporation, The American Tobacco Company, American Brands Inc., British American Tobacco (Investments) Limited and BATUS Holdings Inc.	THOMPSON COBURN J. William Newbold One Mercantile Center St. Louis, MO 63101-1693 Attorneys for Lorillard Tobacco Company and Loews Corporation
HOWARD RICE MENEROVSKI CANADY ROBERTSON FALK & RABKIN H. Joseph Escher, III Three Embarcadero Center, 7th Floor San Francisco, CA 94111 Attorneys for R.J. Reynolds Tobacco Co.	NESS, MOTLEY, LOADHOLT Ann Kimmel Ritter PO Box 365 Barnwell, SC 29812 Attorneys for Plaintiff
THE SCO GROUP, INC. Ryan E. Tibbitts 355 S 520 W Lindon, UT 84042 Attorneys for BAT Industries	KIRKLAND & ELLIS, LLP Elli Leibenstein Benjamin F. Langner 200 East Randolph Drive Chicago, IL 60601 Attorneys for R.J. Reynolds Tobacco Co.

/s/ John P. Ashton

STEPHEN J. SORENSON, Acting United States Attorney (#3049)
JEANNETTE F. SWENT, Assistant United States Attorney (#6043)
Attorneys for the United States of America
185 South State Street, Suite 400
Salt Lake City, Utah 84111-1506
Telephone (801) 524-5682

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	ORDER
	)	
vs.	)	
	)	
JACQUELINE L. LINDSAY,	)	Case No. 2:97CR00300-001
	)	
Defendant,	)	Honorable Tena Campbell

The Court, having received the Stipulation of the parties dated Sept 2006 and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Judgment was entered on January 8, 1998 in the total sum of $29,735.00 in favor of the United States of America (hereafter the "United States") and against Jacqueline L. Lindsay (hereafter "Lindsay").

2. Lindsay has agreed to pay and the United States has agreed to accept monthly installment payments from her in the amount of $750.00 commencing on September 15, 2006 and continuing thereafter on the 1st day of each month for a period of 12 months. At the end of said time period, and yearly thereafter, Lindsay shall submit a current financial statement to the United States Attorney's Office. This payment schedule will be evaluated and may be modified, based on the documented financial status of Lindsay.

3. In addition to the regular monthly payment set forth in paragraph 2, above, Lindsay has agreed that the United States may submit her debt in the above-captioned case to the State of Utah and the U.S. Department of Treasury for inclusion in the State Finder program and the Treasury Offset program. Lindsay understands that under these programs, any state or federal payment that she would normally receive may be offset and applied toward the debt in the above-captioned case.

4. Lindsay has agreed that the caption in this case may be changed to United States v. Jacqueline Lund aka Jacqueline L. Lindsay.

5. Lindsay shall submit all financial documentation in a timely manner and keep the United States Attorney's Office apprised of the following:

a. Any change of address; and

b. Any change in employment

6. The United States has agreed to refrain from execution on the judgment so long as Lindsay complies strictly with the agreement set forth in paragraphs 2 and 4, above. In the event Lindsay fails to comply strictly with the terms set forth in the Stipulation dated

Sept 2006 the United States may move the Court ex parte for a writ of execution and/or a writ of garnishment or any other appropriate order it deems necessary for the purpose of obtaining satisfaction of the judgment in full.

DATED this 11 day of September, 2006.

BY THE COURT:

Tena Campbell, Judge
United States District Court

APPROVED AS TO FORM:

JACQUELINE L. LINDSAY
Defendant